

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 661

HELLENIC LINES LIMITED, Et Al.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

DOCKET ENTRIES

Date	Filings—Proceedings
1965	
Aug. 13	Libel filed,
Aug. 13	Seizure and copy issued for seizure of SS HELLENIC HERO,
Aug. 13	Monition and copy issued for service on O'Connor and Company, as Agents for Hellenic Lines Ltd.,
Aug. 13	Authority of Proctor for Libelant, Ross Diamond, Jr., for Clerk to release SS HELLENIC HERO upon the posting of a bond in the sum of \$20,000.00 filed,
Aug. 13	Monition returned Executed,
Aug. 13	Claim of Ioannis Delagrammatikas, Master, taken, acknowledged and filed,
Aug. 13	Claim Bond in the sum of \$20,000.00 taken, acknowledged and filed,
Aug. 13	Writ of Discharge and copy issued to U.S. Marshal,
Aug. 13	Copy of Claim, Claim Bond and Discharge mailed to Ross Diamond, Jr.,

- Aug. 18 Seizure returned Executed,
- Aug. 18 Writ of Discharge returned Executed,
- Sept. 13 Respondents' Plea to Jurisdiction of subject matter filed, with attachments, as shown in Section VI of the Plea,
- Nov. 10 Amended libel filed,
- Nov. 12 Libelant's Interrogatories propounded to Respondent, Hellenic Lines, Ltd., filed,
- Nov. 12 Libelant's Interrogatories propounded to Respondent, Universal Cargo Carriers, Inc., and the SS HELLENIC HERO, her engines, etc., filed,
- Nov. 22 Monition* and copy thereof, together with copy of amended libel issued for service on O'Connor and Company, Mobile, Alabama, Agent for Universal Cargo Carriers, Inc.,
- Nov. 23 Motion to quash service of process on Messrs. O'Connor and Company, filed by respondent Universal Cargo Carriers, Inc.
- Nov. 23 Monition returned, executed on Universal Cargo Carriers, Inc.

1966

- Feb. 14 Answers to Interrogatories Propounded by Libelant, filed by Respondent Universal Cargo Carriers, Inc.,
- Answers to Interrogatories Propounded by Libelant, filed by Respondent Hellenic Lines Limited,
- Feb. 18 2 Motions for Orders requiring More Complete Answers to Interrogatories and for Leave to

File Additional Interrogatories, filed by libelant with proposed additional interrogatories attached,

Apr. 1 Motion to quash service of process on Messrs. O'Connor & Co., filed 11-23-1965 by respondent Universal Cargo Carriers, Submitted,

Motion for leave to file additional interrogatories to Hellenic Lines filed by libelant on 2-18-66 Granted,

Motion for leave to file additional interrogatories to Universal Cargo Carriers, Inc., filed by libelant 2-18-66 Granted; Minute Entry 19,964-A,

Apr. 8 Copies mailed to attorneys,

May 5 Motion to Require Answers to Interrogatories, filed by libelant,

May 20 Order entered Granting Motion to Require Answers to Interrogatories, filed on May 5, 1966 by libelant; Min. Entry No. 20,186

May 24 Copies mailed to attorneys,

June 9 Answers to Additional Interrogatories propounded by libellant filed by respondent, Universal Cargo Carriers, Inc.,

June 9 Answers to Additional Interrogatories propounded by libellant filed by respondent, Hellenic Lines, Ltd,

June 14 Alternative Motion for Order Requiring More Complete Answers to Interrogatories, for Order Requiring Answers to Interrogatories to be Made Under Oath as Required by Admiralty Rule 31, or Motion for Order Denying Respond-

ents' Plea to the Jurisdiction of this Court,
filed by libelant,

July 15 Motion for Order Applying Jones Act, filed by
libelant

Arguments heard, one witness examined, ex-
hibits offered in evidence and the following mo-
tions were taken under submission:

Plea to Jurisdiction of subject matter, filed on
9-13065 by respondent,

Motion for order requiring more complete an-
swers, filed by libelant on 2-18-66 as to respond-
ents Hellenic Lines, Ltd., and Universal Cargo
Carriers, Inc.

Alternative motion for order requiring more
complete answers to be made under oath as re-
quired by Adm. Rule 31, or Motion for order
denying respondents' plea to the jurisdiction of
this Court, filed by libelant on June 14, 1966.

Motion for order applying Jones Act to this
proceeding filed by libelant on 7-15-66. (Minute
Entry No. 20,500)

July 18 Copies mailed to attorneys,

Aug. 2 Order entered Denying Plea to Jurisdiction of
the subject matter, filed by respondent Hellenic
Lines, Ltd. and submitted after argument on
July 15, 1966, Minute Entry No. 20,628,

Aug. 4 Copies mailed to attorneys,

Aug. 16 Motion to Reconsider and Motion to Dismiss
filed by respondent Hellenic Lines Limited,

Sept. 27 Order entered ruling the following motions as
Moot: Motion for order requiring more com-

plete answers to interrogatories; Alternative motion for answers to interrogatories under Admiralty Rule 31; and Motion for order applying Jones Act, 1M/E No. 20963)

- Sept. 28 Copies of ME mailed to George F. Wood and Ross Diamond, Jr., attorneys,
- Oct. 21 Order entered granting motion to reconsider the court's ruling of Aug. 2, 1966 which denied motion of respondent, Hellenic Lines, Limited to dismiss the libel and now, taking under submission respondent, Hellenic Lines, motion to dismiss, see M/E 21,113, copy mailed to attorneys 10-25-66,

Pre-Tried on January 3, 1967.

1967

- Apr. 17 Notice of taking deposition of Dr. Blaise Salatch, filed by libelant,
- Apr. 27 Answer of defendant filed with Implied Motion to Dismiss found in last paragraph of answer,
- May 8 Motion to Strike Portion of Answer, filed in open court by libelant,
- May 8 Trial begun; witnesses examined, exhibits offered, all parties rest,
- May 8 Order entered, it is ordered by the Court that this cause be, and the same is hereby taken under Submission. See M/E 22,059
- May 10 Copy of M/E 22,059 mailed to each attorney,
- May 15 Memorandum in support of second defense, that of lack of jurisdiction over the subject matter filed by respondents,

- Oct. 4 Findings of Fact, Conclusions of Law and Decree entered by court awarding libelant judgment in sum of \$6,000.00 plus interest at 6% per annum from Aug. 3, 1967 until paid, costs taxed to the respondents, see M E 22,750
- Oct. 5 Copy of M/E 22,750 mailed to attorneys of record,
- Oct. 16 Notice of Appeal filed by Hellenic Lines Limited,
- Nov. 22 Order entered extending appeal to January 15, 1968; Min. Entry No. 23,057, copy mailed to U. S. Court of Appeals, with copy of Notice of Appeal,

1968

- Jan. 12 Record on Appeal sent to U. S. Court of Appeals, New Orleans, La., with exhibits, etc.

1969

- July 14 Judgment from U. S. Court of appeals affirming District Court, Issued as Mandate July 11, 1969; further ordered that appellants pay costs,

[1*] In the District Court of the United States
Southern District of Alabama
Southern Division

ZACHARIAS RHODITIS,

Libelant,

vs.

HELLENIC LINES LTD, and
the SS HELLENIC HERO,
her engines, boilers, cargo,
tackle and appurtenances,
etc.,

Respondents.

Admiralty Action
No. 3165

(Filed: Aug. 13, 1965)
Seaman's Action

LIBEL IN REM AND IN PERSONAM

To the Honorable Judge of the United States District
Court for the Southern District:

The libel of Zacharias Rhoditis against Hellenic Lines
Ltd. and the SS HELLENIC HERO, her engines, boilers,
cargo, tackle and appurtenances, etc., for the recovery of
damages for injuries sustained.

One

That at all times hereinafter mentioned, the Respondent,
Hellenic Lines Ltd. was and still is a corporation organ-
ized and existing under and by virtue of the laws of a
country that is unknown to the Libelant, however, the
Respondent has been and is now doing business within the
City of Mobile, State of Alabama, and is subject to the
jurisdiction of this Honorable Court.

* Numbers appearing in brackets indicate page numbers of
multilith record in the District Court.

[2]

Two

That at all times hereinafter mentioned, the Respondent, Hellenic Lines Ltd. managed, operated, owned and controlled and navigated said vessel upon the navigable waters of the United States of America.

Three

That at all the times hereinafter mentioned, the aforesaid vessel was engaged in foreign commerce wherein the aforesaid vessel was used to carry freight between the ports of the United States and foreign ports, and which vessel is now in the Port of Mobile, State of Alabama, and is within the jurisdiction of this Court.

Four

That at all the times hereinafter mentioned, upon information and belief, it is alleged that Hellenic Lines Ltd. is substantially owned, controlled and operated by citizens of the United States and/or domiciliaries of the State of New York.

Five

That at all the times hereinafter mentioned, the owners of the aforesaid vessel were doing business in the City of Mobile, and that service may be had upon its agents, which agents maintain a place or places of business within the jurisdiction of this Court.

[3]

Six

That on or about the third day of August, 1965, the Libelant was engaged aboard said vessel in the capacity of a first class seaman at monthly wages of \$125.00 per month plus overtime and found.

Seven

That on or about the third day of August, 1965, while the said vessel was docking in the Port of New Orleans, Louisiana, as a result of the negligence of said Respondent, its agents, servants and/or employees, and the unseaworthiness of the vessel, the Libelant was caused to sustain severe and painful injuries as a result of an accident aboard said vessel.

Eight

That the aforesaid accident was due to the unseaworthiness of said vessel, its gear and equipment, as well as the negligence of the Respondent in that its gear and equipment were not fit for the purpose then and there being used, in that the Libelant and his fellow workers were engaged in removing a spring line off the vessel's winch, with the aid of a chain when the chain broke or otherwise, parted, striking the Libelant and causing the hereinafter described injuries; said accident was caused by the negligence of the Respondent in that it failed to supply [4] the Libelant with a safe place in which to do his work aboard said vessel; failed to supply the Libelant with a safe and seaworthy vessel and appliances; failed to warn the Libelant of impending dangers that the Respondent was or should have been aware of; failed to promulgate and enforce proper rules for the safe conduct of the work aboard the vessel, and were otherwise negligent and the vessel was otherwise unseaworthy in the premises.

Nine

As a proximate result of the foregoing accident the Libelant was caused to sustain severe, painful and permanent injuries to his person in that the Libelant sustained a severe fracture of his right leg; he sustained damage to

the tendons, ligaments and tissues of his right leg; he sustained a severe contusion and penetrating laceration to his right leg; the Libelant has been incapacitated from attending to his usual duties of a seaman which necessitated his hospitalization in the Port of New Orleans, it is alleged upon information and belief that the Libelant has been and will be caused to expend large sums of money for maintenance ashore and for medical expenses; that he will suffer a substantial loss in earnings and that his earning capacity for future work will be materially diminished as a result of his injury; and in addition, it is [5] alleged that the Libelant has suffered and will continue to suffer much physical pain and mental anguish, all to his damage in the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars.

Ten

That all and singular the foregoing matters are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the Libelant prays that process in due form of law for such cases made and provided, issue against the SS HELLENIC HERO, her engines, boilers, cargo, tackle and appurtenances, etc., and that it may be required to appear and answer the premises aforesaid; and that process in due form of law for such cases made and provided, issue against Hellenic Lines Ltd., a corporation, requiring them to appear in the Court and answer this libel; and the Libelant prays that this Honorable Court will be pleased to decree to the Libelant payment of the amount which shall be due him for the causes aforesaid, and that the SS HELLENIC HERO, her engines, boilers, cargo, tackle and appurtenances, etc., and Hellenic Lines Ltd., a corporation, and each of them, may be condemned to pay: the same with interest thereon and the costs of this suit,

and that the Libelant may have such other and further relief as in law and justice he may be entitled to receive.

Diamond and Lattoff
Proctors for Libelant

By: s/ Ross Diamond, Jr.

(Certificate Omitted)

[7] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

CLAIM OF UNIVERSAL CARRIERS, INC.

(Number and title omitted)

(Filed: Aug. 13, 1965)

Comes Ioannis Delagrammatikas, master of said SS HELLENIC HERO and for Universal Carriers, Inc., a Panamanian Corp. owners thereof, intervenes herein and claims possession of said vessel and says that said Universal Carriers, Inc. in whose behalf this claim is made, are the true and bona fide owners of said vessel and that no other persons are the owners thereof. And claimant further says that he is duly authorized to make this claim for and on behalf of said owners.

s/ I. Delagrammatikas
Ioannis Delagrammatikas, Master,
SS HELLENIC HERO

(Certificate omitted.)

CLAIM BOND

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

(Title omitted)

We, the Hellenic Lines, Limited, a Greek corporation, as Principal and National Surety Corporation, as Surety, do hereby acknowledge ourselves, jointly and severally, to [8] be held and firmly bound unto Zacharias Rhoditis, in the sum of Twenty-Thousand and 00/100 Dollars, lawful money of the United States of America, to be paid to the said Zacharias Rhoditis, his heirs, devisees, executors or administrators, to which payment well and truly to be made, we hereby bind ourselves and our successors and assigns, firmly by these presents.

Sealed with our seals, and dated this 13th day of August, 1965.

Whereas, a libel has been filed in the United States District Court for the Southern District of Alabama, Southern Division, on the 13 day of August, 1965 by Zacharias Rhoditis against the SS HELLENIC HERO, her engines, boilers, etc. and Hellenic Lines, Limited, in a cause of negligence and unseaworthiness, civil and maritime, wherein it is alleged that there is due and owing to the said Zacharias Rhoditis, the sum of Fifty Thousand Dollars (\$50,000.00).

The Condition of This Obligation Is Such, That if the above bounden Hellenic Lines, Limited shall abide and answer the decree of the Court in such cause, then the

above obligation to be void; otherwise to be and remain [9] in full force and virtue.

Hellenic Lines, Limited

By: s/ I. Delagrammatikas (Seal)
Its Agent

National Surety Corporation

By: s/ D. E. Ludlow (Seal)
Its Attorney in Fact

(Certificate omitted.)

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

SEIZURE RETURNED EXECUTED

(Number and title omitted)

(Filed: Aug. 18, 1965)

SEAMAN'S ACTION, WITHOUT
PREPAYMENT OF COSTS

The President of the United States to the Marshal of said District or any of his Deputies—Greeting:

You Are Hereby Commanded, That you attach, seize, take and safely keep the SS HELLENIC HERO, her engines, boilers, tackle, apparel and furniture, is or lately was master, now lying at the port of Mobile, so that you have said SS HELLENIC HERO, her engines, boilers, tackle, apparel and furniture subject to the order and decree of this Court at a term thereof to be held at the [10] city of Mobile, on Monday, the 13th day of September A. D. 1965, to answer the libel of Zacharias Rhoditis,

Herein Fail Not, and have you then and there this writ.

Witness, The Honorable DANIEL H. THOMAS, Judge of the United States District Court for the Southern District of Alabama, and the seal of said Court at the city of Mobile, Alabama, this the 13th day of August, A. D. 1965.

William J. O'Connor, Clerk,

By: s/ Dorothy Pettiss,

Deputy Clerk

Proctors for Libelant:

Ross Diamond, Jr.

Messrs. Diamond and Lattof

Van Antwerp Building

Mobile, Alabama

Note: On release of said vessel a claim bond for \$100,000.00, is required.

Return

Received this Writ of Seizure at Mobile, Ala., on August 13th, 1965 and on August 13th, 1965 executed same by Seizing the S/S Hellenic Hero at Pier B. South, Alabama State Docks, Mobile, Ala. and by appointing Captain Ioannis Delagrammatikas as custodian.

Fee— 3.00

Exp— .96

Total \$3.96

s/ George M. Stuart

U. S. Marshal

By—s/ G. V. Manley, Jr.

Deputy

**[12] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION**

PLEA TO JURISDICTION OF SUBJECT MATTER

(Number and title omitted)

(Filed: Sept. 13, 1965)

Comes now Hellenic Lines Limited and appears specially and solely for the purpose of contesting the jurisdiction of this suit and for no other purpose, and by way of plea to the jurisdiction of the court avers on information and belief as follows:

I

The libelant in this cause seeks recovery for injuries occurring on or about August 3, 1965 aboard the SS HELLENIC HERO in the Port of New Orleans, Louisiana, and alleges that Hellenic Lines Limited was negligent and [13] said vessel was unseaworthy. The libel further alleges that libelant was engaged aboard the said vessel in the capacity of a first class seaman at monthly wages of \$125 per month, plus overtime and found.

II

The SS HELLENIC HERO is owned by Universal Cargo Carriers, Inc., a Panamanian corporation. She is fully controlled and operated by Hellenic Lines Limited. Hellenic Lines Limited is a corporation organized and existing under and pursuant to the laws of Greece, having been organized there in 1934. All of the stockholders of Hellenic Lines Limited are citizens of Greece and no American citizen owns any shares of that corporation directly or indirectly. Hellenic Lines Limited was the employer of the libelant on the voyage on which he was injured as set out in the libel.

III

The HELLENIC HERO is registered under the laws of Greece, with her home port in Piraeus, Greece and flies the Greek flag. Libelant is a citizen of Greece and signed his employment contract with Hellenic Lines Limited in Heraclion, Greece, on July 1, 1965. Said employment contract expressly provides that Greek law and the Greek collective agreement shall govern as between the employer and crewmember and that all claims or differences arising [14] out of the contract of employment or founded directly or indirectly on any work done or service rendered onboard by the seaman shall be adjudged and adjudicated solely and exclusively by the courts of Greece.

IV

The HELLENIC HERO is employed by Hellenic Lines Limited in trade service between ports in India, the Eastern Mediterranean and the United States. All her crew members are citizens of Greece.

V

Libelant has been returned at the expense of the vessel to Greece and is presently in Greece.

VI

Attached to this plea in support of the averments herein are the following: Affidavit of Gernald Hennessey, Manager of Claims and Insurance Department and the Attorney in Fact for Hellenic Lines Limited; employment contract signed by libelant, together with translation thereof; wage account, with translation thereof; certified copy of deck log extract, with translation thereof; letter from respondent's home office to its New York office attesting the arrival in Greece of libelant and its willingness to pay him all benefits to which he is entitled under

the Greek law; and the deposition of libelant taken by agreement on August 16, 1965.

[15] The premises considered, respondent and claimant pray that this Honorable Court will decline jurisdiction of this cause and will dismiss the libel filed herein.

Respectfully submitted,

s/ George F. Wood

For Pillans, Reams, Tappan, Wood
& Roberts

Proctors for Respondent and
Claimant

State of Alabama }
County of Mobile }

Personally appeared before me, the undersigned authority in and for said county in said state, George F. Wood, who, being by me first duly sworn, on oath deposes and says:

That he is one of the proctors for Respondent and Claimant; that he is informed and believes, and upon such information and belief states that the facts set out in the foregoing plea are true and correct; that the sources of affiant's information are the records of Hellenic Lines Limited; statements made by administrative personnel and official documents of the vessel and of Hellenic Lines Limited. The reason this verification is made by proctor is that respondent and claimant is a Greek corporation, none of the officers of which are within this district.

s/ George F. Wood

(Certificates omitted)

[16] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

Affidavit of Gerald Hennessy

(Number and title omitted)

State of New York

County of New York

Personally appeared before me, the undersigned authority in and for said County in said State, Gerald Hennessy, who, being by me first duly sworn, on oath deposes and says:

[17] I am Manager of the Claims and Insurance Department and Attorney-in-Fact for Hellenic Lines Limited and as such am familiar with the facts set out in this affidavit and am authorized to make this affidavit.

The SS HELLENIC HERO is owned by Universal Cargo Carriers, Inc., a Panamanian Corporation and registered in Piraeus, Greece from the time of her launching December 6, 1957 under registry #1380. The operation of the vessel has been turned over to Hellenic Lines Limited which has full control over the manning, victualing, fueling, trading, etc., of the vessel.

Hellenic Lines Limited is a Corporation organized and existing under, and pursuant, to the laws of Greece since 1934. All of the stockholders of Hellenic Lines Limited are citizens of Greece and no American citizen owns any shares of that Corporation directly or otherwise.

Hellenic Lines Limited was the employer of Zacharias Rhoditis on the voyage on which he was injured as set out in the Libel in the above-styled cause. Zacharias Rhoditis is a citizen of Greece having been born in Magnesia near Volos and signed an employment contract with Hellenic Lines Limited in Heraclion, Greece on July 1,

1965. Attached hereto and forming a part hereof is a copy of the employment agreement signed by Rhoditis which expressly provides that Greek law and the Greek [18] Collective Agreement shall apply as between the employer and crew member and that all claims or differences arising out of the contract of employment shall be adjudged and adjudicated solely and exclusively by the Greek Law Courts.

The HELLENIC HERO is employed by Hellenic Lines Limited in trade service between ports in India, the Eastern Mediterranean and the United States. The vessel having been registered in Piraeus, flies the flag of Greece and all crew members are citizens of Greece.

s/ Gerald Hennessy

(Certificate omitted)

Translation from the Greek

Maritime Employment Contract Under Sections 53 & 54 of the Code of Private Maritime Law

1. CONTRACTING PARTIES:

a) The Master of the legal representative of the Master or Owners
[19] of the M/S HELLENIC HERO

Port of Registry; Piraeus, capacity: 7,068 NRT, International Call Letters: S.V.G.M., domiciled at No. 3 Atki Miaouli in the city of

Manager of the joint shipping enterprise (if any)
domiciled at No. Street, in the city of

and b) The Seaman ZACHARIAS RODITIS, born in Magnesia in the year 1927, Seaman's Registration Number 17449

have agreed that the second party hereto is to sign articles on board the aforementioned vessel under the following terms:

Rating: Able Seaman

Wage and employment terms as provided by the Collective Agreement.

Duration of the Contract: One round trip, commencing in Greece and terminating in Greece, irrespective of loading and discharging ports after calling at ports of the U.S.A., India and/or the Persian Gulf.

2) SPECIAL TERMS

- a)
- b)

Applicable Law and Jurisdiction

3) This contract shall be governed solely and exclusively by the laws of Greece and the Greek Collective Agreements.

[20] It is further agreed that any claim or dispute, whether arising out of this engagement or contract or howsoever founded directly or indirectly on this contract or founded directly or indirectly on any work done or service rendered on board by the seaman, shall be adjudged and adjudicated solely and exclusively in the courts of Greece.

4) The vessel is presently at Iraklion.

Iraklion, July 1, 1965

The Contracting Parties:

Shipping Commissioner: (Illegible signature)

The Master: (Illegible signature)

Seaman to be signed on: Z. Roditis

Remarks:

This contract is dated and signed
by the contracting parties and

The illiteracy of the
seaman to be signed

by the appropriate government
officer

on is hereby certi-
fied. Shipping Com-
missioner

(No signature)

Seal: Shipping Commissioner's Office—
Iraklion

[21] Translation from the Greek

Hellenic Lines Limited

M/S Hellenic Hero
Voyage 18

ACCOUNT OF WAGES

No. 32534

Name of Seaman: Zacharias Roditis—Able Seaman

Date Wages began: July 21, 1965

Date wages ceased: August 3, 1965

Total period employed: 13 days

Earnings

Months: . . . Days: 13 @ £ 40. 0. 0 per month . . . £ 17. 6. 8

Overtime: 100 hrs. @ 3/- 15. 0. 0

Extra pay for cleaning holds $1\frac{1}{2}$ 2. 0. 0

Total: £ 34. 6. 8

Deductions & Advances:

Deductions (withholdings) from wages £ 1.16.10

from overtime 0. 1. 0

400 cigarettes 0.16. 6

Deductions from extra pay for cleaning

holds 1-2 0. 0. 3

Total deductions: 2.15. 4

Final balance: £ 31.11. 4

or: \$88.38

The above account of earnings and deductions is correct.
Received in full settlement of all earnings and claims in
the sum of £31.11.4. Discharged on account of injury.

At New Orleans, August 3, 1965

Master: (Illegible signature)

Seaman: Z. Roditis

Seal: HELLENIC HERO—Piraeus.

[22] Translation from the Greek

YEAR: 1965 DECK LOG EXTRACT OF THE M/S
HELLENIC HERO

Date	Time	Remarks
Tues. Aug.	3 0710	At the hour shown opposite, while mooring the ship, Able Seaman Zacharias Roditis, Seaman's Registration Number 17449, who was on the bow at the time, was injured in the right leg as a result of parting of the breast line stopper. A call was put in immediately for an ambulance and he was removed to a hospital.
	0719	Finished mooring. Pilot ashore. Finished with engine.
	0800	Commenced loading with three gangs of longshoremen, using the ship's own means in Holds Nos. 2, 3 and 4.
	Noon	Knocked off loading.
	1500	Finished with all loading.

Draft on sailing:

Fwd: 12' 09"

Aft: 18' 09"

Loaded 753 tons of cotton seed oil in drums for Alexandria

[23]

Able Seaman Z. Roditis, who has been hospitalized as arranged by the New Orleans Agents, was signed off on account of injury to his right leg. His wages were paid to him up to and including today.

Exact copy

Master

I. Delagrammatikas

Seal: HELLENIC HERO—Piraeus

Exact Copy

New York, August 25, 1965

Shipping Commissioner: (Illegible signature)

Seal: Mercantile Marine

Department of the Royal Consulate General of Greece at New York.

Translation from the Greek

YEAR: 1965 DECK LOG EXTRACT OF THE M/S
HELLENIC HERO.

Date	Time	Remarks
Fri. Aug. 13	1300	Resumed loading.
	1400	A process server boarded the ship and served a writ of attachment of the vessel as security for satisfaction of the claims of Able Seaman Zacharias Roditis, Seaman's Registration Number 17,449, injured at New Orleans on August 3, 1965.

- [24] 1630 Following action taken by me and
by the vessel's agent, the attachment of the ship was vacated.
1700 Knocked off loading.

Exact copy

Master

I. Delagrammatikas

Seal: HELLENIC HERO—Piraeus

Exact Copy

New York, August 25, 1965

Shipping Commissioner

(Illegible signature)

Seal: Mercantile Marine Department of the Royal Consulate General of Greece at New York

HELLENIC LINES LIMITED

Head Office: Piraeus—Greece

(Received Aug. 25, 1965
Hellenic Lines, Ltd)

August 23, 1965

Your Ref. P1-9071

Hellenic Lines Limited,
New, York.

Dear Sirs:

m.s. "Hellenic Hero"
Zacharias Rhoditis, A.B.
August 3, 1965

We have before us your two letters concerning subject seaman dated August 16 and 19 with enclosure for [25] both of which we thank you.

Rhoditis actually arrived in Athens on the 18th instant, was met by us at the Athens Airport, and then sent to the doctor as he was in need of some medical attendance. Dr. Katsafados who attended him and X-rayed his leg reported to us that Rhoditis beyond his fractured fibula has no other serious damage and as soon as the plaster is removed from his leg and the period of his convalescence is over he will be able bodied again with no disability at all.

We believe that Rhoditis will not deny to settle his account before the Court, as in the case of Constantinides and some others on previous occasions we did, when we will, of course, offer him all the benefits to which he is entitled under the Greek Law and let you know in due course.

Very truly yours,
Hellenic Lines Limited
Claims Department
s/ (Illegible)

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

AMENDED LIBEL

(Number and title omitted) (Filed: Nov. 10, 1965)

Comes the Libelant, Zacharias Rhoditis, by and through his proctor of record, and amends his libel heretofore filed to read as follows:

[26]

One

That at all the times hereinafter mentioned, the Respondent Hellenic Lines Ltd. was and still is a cor-

poration organized and existing under and by virtue of the Laws of Greece; and that Respondent Universal Cargo Carrier, Inc. was and still is a corporation organized and existing under and by virtue of the Laws of Panama; however, the Respondents have been and are now doing business within the City of Mobile, State of Alabama, and are subject to the jurisdiction of this Honorable Court.

Two

That at all the times hereinafter mentioned, the Respondents, Hellenic Lines Ltd. and Universal Cargo Carriers, Inc. managed, operated, owned and controlled and navigated said vessel upon the navigable waters of the United States of America.

Three

That at all the times hereinafter mentioned, the aforesaid vessel was engaged in foreign commerce wherein the aforesaid vessel was used to carry freight between the ports of the United States and foreign ports, and which vessel is now in the Port of Mobile, State of Alabama, and is within the jurisdiction of this Court.

Four

That at all the times hereinafter mentioned, upon information and belief, it is alleged that Hellenic Lines [27] Ltd. and Universal Cargo Carriers, Inc. are substantially owned, controlled and operated by citizens of the United States and/or domiciliaries of the State of New York.

Five

That at all the times hereinafter mentioned the owners of the aforesaid vessel were doing business in the City of

Mobile, and that service may be had upon its agents, which agents maintain a place or places of business within the jurisdiction of this Court.

Six

That on or about the third day of August, 1965, the Libeland was engaged aboard said vessel in the capacity of a first class seaman at monthly wages of \$125.00 per month plus overtime and found.

Seven

That on or about the third day of August, 1965, while the said vessel was docking in the Port of New Orleans, Louisiana, as a result of the negligence of said Respondents, their agents, servants and/or employees, and the unseaworthiness of the vessel, the Libelant was caused to sustain severe and painful injuries as a result of an accident aboard said vessel.

Eight

That the aforesaid accident was due to the unseaworthiness of said vessel, its gear and equipment, as well [28] as the negligence of the Respondents in that its gear and equipment were not fit for the purpose then and there being used, in that the Libelant and his fellow workers were engaged in removing a spring line off the vessel's winch, with the aid of a chain, when the chain broke or otherwise parted, striking the Libelant and causing the hereinafter described injuries; said accident was caused by the negligence of the Respondents in that they failed to supply the Libelant with a safe place in which to do his work aboard said vessel; failed to supply the Libelant with a safe and seaworthy vessel and appliances; failed to warn the Libelant of impending dangers that the Respondents were or should have been aware of; failed to

promulgate and enforce proper rules for the safe conduct of the work aboard the vessel; and were otherwise negligent and the vessel was otherwise unseaworthy in the premises.

Nine

As a proximate result of the foregoing accident the Libelant was caused to sustain severe, painful and permanent injuries to his person in that the Libelant sustained a severe fracture of his right leg; he sustained damage to the tendons, ligaments and tissues of his right leg; he sustained a severe contusion and penetrating laceration to his right leg; the Libelant has been incapacitated from attending to his usual duties of a sea-[29] man which necessitated his hospitalization in the Port of New Orleans, it is alleged upon information and belief that the Libelant has been and will be caused to expend large sums of money for maintenance ashore and for medical expenses; that he will suffer a substantial loss of earnings and that his earning capacity for future work will be materially diminished as a result of his injury; and in addition, it is alleged that the Libelant has suffered and will continue to suffer much physical pain and mental anguish, all to his damage in the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars.

Ten

That all and singular the foregoing matters are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the Libelant prays that process in due form of law for such cases made and provided, issue against the SS HELLENIC HERO, her engines, boilers, cargo, tackle and appurtenances, etc., and that it may be required to appear and answer the premises aforesaid; and

that process in due form of law for such cases made and provided, issue against Hellenic Lines Ltd., a corporation, and Universal Cargo Carriers, Inc., requiring them to appear in the Court and answer this libel; and the Libelant prays that this Honorable Court will be pleased to [30] decree to the Libelant payment of the amount which shall be due him for the causes aforesaid, and that the SS HELLENIC HERO, her engines, boilers, cargo, tackle and appurtenances, etc., and Hellenic Lines Ltd., a corporation, and Universal Cargo Carriers, Inc., and each of them, may be condemned to pay the same with interest thereon and the costs of this suit, and that the Libelant may have such other and further relief as in law and justice he may be entitled to receive.

Diamond and Lattof
Proctors for Libelant

By: s/ Ross Diamond, Jr.

State of Alabama
County of Mobile

Before, me, the undersigned Notary Public in and for said State and County, personally appeared Ross Diamond, Jr., who being first duly sworn, deposes and says: My name is Ross Diamond, Jr., the proctor for Libelant herein. I have been informed and believe in reference to the allegations contained in the foregoing libel and upon said information and belief the facts as set out in said libel are true and correct to the best of my knowledge, [31] information and belief. Libelant is not in the jurisdiction of this Court.

s/ Ross Diamond, Jr.

Ross Diamond, Jr.

(Certificate omitted)

Sworn to and subscribed before me this 10th day of November, 1965.

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

**INTERROGATORIES PROPOUNDED BY LIBELANT
TO HELLENIC LINES, LTD. TO BE ANSWERED
AS REQUIRED BY THE ADMIRALTY RULES**

(Number and title omitted) (Filed: Nov. 12, 1965)

1. State the full names of all stockholders of Hellenic Lines Ltd.

(a) State the citizenship of each stockholder.

(b) State the address of each stockholder.

(c) List those stockholders who are presently in the United States and their addresses in the United States.

(d) List all stockholders who have ever resided in the United States, either on a permanent or temporary basis.

[32] (e) State the percentage of stock owned by each stockholder.

2. If any of the stock of said corporation is owned by other corporate entities, state the names, addresses and citizenship of the stockholders of said corporation or corporations owning an interest in Hellenic Lines Ltd.

3. Name the directors of Hellenic Lines Ltd.

(a) State their citizenship.

(b) State their addresses.

(c) State whether or not any of said directors are presently in the United States or if any of said

directors have in the past permanently or temporarily resided in the United States.

4. State the names of vessels either owned, chartered, operated or controlled by Hellenic Lines Ltd. during the last five-year period of time.
 5. State the number of times these vessels have called at United States ports for purposes of discharging or loading cargo.
 6. State under what agreement or contracts you were operating the SS HELLENIC HERO on August 3, 1965.
- [33] (a) Either attach copies of all contracts or agreements relating to your operation of said vessel at said time or set forth verbatim the agreements or contracts relating in any way to your operation of the vessel at said time.
- (b) Specifically set forth the consideration that you received for your operation of the vessel (if in fact you were operating the vessel) during the period of July 1, 1965, through October 31, 1965.
- (c) State in detail the manner of the computation or the basis upon which this consideration was figured.

Diamond and Lattof

By: s/ Ross Diamond, Jr.
Proctor for Libelant

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

**INTERROGATORIES PROPOUNDED BY LIBELANT
TO UNIVERSAL CARGO CARRIERS, INC. TO BE
ANSWERED AS REQUIRED BY THE ADMIR-
ALTY RULES**

(Number and title omitted) (Filed: Nov. 12, 1965)

- 1/ State the country of your incorporation and the date of incorporation.
2. State the names and addresses of all stockholders.
 - (a) State the citizenship of each stockholder.
 - (b) State the officers of the corporation.
- [34] (c) State whether or not any of the stockholders are presently residing in the United States, either on a temporary or permanent basis.
 - (d) State whether or not any of the stockholders have in the past resided in the United States, either on a temporary or permanent basis.
3. State the names, citizenship and addresses of the directors of said corporation.
 - (a) State the names of said directors that are presently residing in the United States, either on a temporary basis.
 - (b) State the names of the directors that have in the past resided in the United States, either on a permanent or temporary basis.
4. State whether or not this corporation has any stock or owns any interest in the Hellenic Lines Ltd.
5. State the name of the owner of the SS HELLENIC HERO.

6. State the name of the party or corporation operating the SS HELLENIC HERO in August of 1965.

(a) State the entire period of time that this party or corporation has operated said vessel.

[35] 7. Either attach or set out verbatim any and all agreements or contracts under which this vessel was being operated by said party in August of 1965.

(a) State in detail the consideration received by said operating party for operating said vessel.

(b) State the consideration that the vessel owners received.

(c) State in detail the precise method of computing the consideration received by each the operators and the owners.

(d) State the principal address of Universal Cargo Carriers, Inc.

8. If it is not New York City, state whether or not you have offices in New York City and the address of same.

9. State the names of the vessels that you have owned, controlled and/or operated during the past five years.

(a) State the flag of each said vessel.

(b) State the number of times said vessels have called at ports in the United States during the said five year period of time, either to load or discharge cargo.

[36] (c) State the ports of call of each of said vessels in the United States during the last five years.

Diamond and Lattof

By: s/ Ross Diamond, Jr.

By: s/ Ross Diamond, Jr.

[38] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

**UNIVERSAL CARGO CARRIERS, INC.'S ANSWERS
TO INTERROGATORIES PROPOUNDED
BY LIBELANT**

(Number and title omitted) (Filed: Feb. 14, 1966)

Comes Universal Cargo Carriers, Inc., Respondent, and make the following answers to interrogatories heretofore propounded to it by libelant, the answers corresponding by number to the interrogatories:

1. Universal Cargo Carriers, Inc. was incorporated under the laws of the Republic of Panama on September 6, 1956.

2. a-c-d The stock of Universal Cargo Carriers, Inc. is bearer stock, and the identity of the holders of said stock is not reflected in the corporate records of Universal Cargo Carriers, Inc.

2. b See Answer to #3.

3. a-b The names, citizenship and addresses of the Directors and Officers of the respondent are as follows:

Ida I. DePreciado, President
Edward Icaza A., Vice President
Dagoberto Perez H., Secretary

All residents and citizens of the Republic of Panama.

c So far as the respondent knows none of the above named Directors have resided in the United States either on a temporary or permanent basis.

[39] 4. No.

5. The Certificate of Nationality of the HELLENIC HERO shows it to be owned by Universal Cargo Carriers, Inc. and registered in the port of Piraeus, Greece.

6. & 6 a Hellenic Lines Limited has operated the HELLENIC HERO exclusively from the time of its launching on June 18, 1957 up to the present.

7. a-c Attached hereto is copy of the agreement between Universal Cargo Carriers, Inc. and Hellenic Lines Limited dated January 1, 1960.

(d) The principal address of Universal Cargo Carriers, Inc. is Avenida Central, 8-40, Panama City, Republic of Panama.

8. The respondent does not maintain an office in the City of New York.

9. During the past five (5) years Universal Cargo Carriers, Inc. has owned the HELLENIC HERO, HELLENIC PIONEER, ANGLIA, ANGHYRA, and BEROLINON.

(a) The above five (5) vessels are registered in the port of Piraeus, Greece and fly the flag of Greece.

(b) The ANGLIA, ANGHYRA and BEROLINON are operated in a regular cargo liner service between United Kingdom/Continent and Mediterranean ports and have not called at U. S. A. ports during the past five (5) years. The HELLENIC HERO has called at various ports in the United States Gulf/Atlantic service on the average of twice a year during the past five (5) years. The HELLENIC PIONEER has called at U. S. Gulf and Atlantic ports on the average of twice a year since August, 1962.

[40]

- (c) This portion of the interrogatory is excepted to as being irrelevant and placing an undue burden upon the respondent.

Universal Cargo Carriers, Inc.

By: s/ Gerald Hennessy
its

State of New York }
County of New York }

Personally appeared before me, the undersigned authority in and for said county in said state, Gerald Hennessy, who being by me first duly sworn, on oath deposes and says: I am attorney-in-fact of Universal Cargo Carriers, Inc. and as such, as authorized to make answer to the interrogatories propounded in this cause. The answers set out above to the interrogatories are true and correct.

(Certificate omitted.)

[41]

AGREEMENT

This Agreement made as of January 1, 1960 by and between Universal Cargo Carriers, Inc., a corporation duly organized and existing under and pursuant to the laws of the Republic of Panama, with its office at Avenida Central 8-40, Panama, R. P. (hereinafter referred to as "Universal"), and HELLENIC LINES LIMITED, a corporation organized and existing under and by virtue of the laws of the Kingdom of Greece, with its office at Piraeus, Greece (hereinafter referred to as "Hellenic"):

Witnesseth:

Whereas, Universal is the owner and/or disponent owner of various Greek flag vessels and is desirous of having Hellenic act as Agent in Greece for any and all vessels now or hereinafter owned and/or controlled by

Universal, carrying cargo and/or passengers to and from Greece; and

Whereas, Hellenic has indicated its willingness to act as such Agent on the terms and conditions hereinafter set forth,

Now Therefore, in consideration of the sum of One Dollar (\$1.00) each to the other in hand paid, the mutual covenants herein contained, and of other good and valuable consideration, it is agreed as follows:

1. That Universal appoints Hellenic as its agent in [42] Greece with respect to any and all vessels now or hereafter owned or controlled by Universal which carry cargoes or passengers to or from Greece.

2. That Hellenic accepts the appointment and undertakes and promises to act for and on behalf of the said vessels upon the terms and conditions herein provided in accordance with reasonable shipping and commercial practices, to make available its offices and facilities and to devote, to the best of its ability, its best efforts on behalf of Universal, and in connection therewith, to:

(a) Collect all monies due Universal under any and all charterparties, affreightment contracts, bills of lading or other contracts for the carriage of cargo, covering the said vessels, providing for loading or discharging in any part or parts in Greece and to deposit, remit or disburse the same and to account to Universal for all such monies collected or disbursed by it or any of its agents or sub-agents.

(b) Provide and pay for all fuel, fresh water, victuals, supplies, equipment, stevedoring and other cargo handling expenses, repairs and maintenance charges, port charges, wharfage and docking, pilotage, canal dues, commissions and consular charges and all other expenses in connection with the said vessels

or any of them while in Greece, for the account of Universal.

[43] 3. That Universal shall pay to Hellenic as consideration for acting as said agents for the said vessels.

(a) One and one-quarter per cent ($-1\frac{1}{4}\%$) on that portion of the gross freights or other charges (after deducting commissions and/or brokerage payable to third parties) under bills of lading, affreightment contracts or other contracts for the carriage of cargo and/or passengers to and from Greece;

(b) Usual agency fees on cargoes in bulk or moving under charter parties or booking notes as full cargoes or parcels for Greece.

4. That Hellenic shall perform the duties required to be performed hereunder in an economical and efficient manner and exercise due diligence to protect and safeguard the interests of Universal in all respects and to avoid loss and damage of every nature to Universal. All expenses as provided for in subparagraph (b) of paragraph 2 hereof are to be reimbursed to Hellenic by Universal or offset by Hellenic from the freights collected on the said vessels upon proper vouchers therefor. Hellenic shall render to Universal as soon as possible after each vessel's sailing the respective account of disbursements and shall remit the balance of freights due to [44] Universal after payment of its commissions and disbursements incurred as above.

5. That Hellenic may appoint sub-agents in ports in Greece other than Piraeus in its sole and uncontrolled discretion to assist it in performing its duties hereunder and the remuneration of such sub-agents shall be absorbed and defrayed by Hellenic and the disbursements of such sub-agents shall be for the account of Universal and paid as provided above. Hellenic shall use due dili-

gence in the selection of such sub-agents and shall be fully responsible for the acts of such sub-agents in connection with such sub-agencies.

6. This agreement shall remain in effect for a period of two (2) years from January 1, 1960 and shall be automatically renewed for a further period of two (2) years unless at least sixty (60) days prior to the expiration of this agreement either party shall notify the other in writing that it elects to terminate this agreement, whereupon said agreement shall terminate at the expiration of the said term. A similar automatic renewal for a further term of two (2) years shall apply to any extended or renewed term unless the said notice in writing is given by either party at least sixty (60) days prior to the expiration of such renewal or extended term.

7. If any dispute or difference should arise in connection with this contract, the same shall be referred [45] to a single arbitrator in New York, according to New York Arbitration Law, to be appointed by the parties hereto, but if the parties cannot agree upon a single Arbitrator, then they shall each appoint an Arbitrator and the two so appointed shall appoint a third Arbitrator. The decision of the single Arbitrator, or in the event that there are three Arbitrators, the decision of any two shall be final and binding upon the parties hereto and may, for the purpose of this contract, be made a rule of court.

8. The parties hereto agree that the validity and interpretation of this contract shall be governed by the laws of the State of New York, United States of America.

9. This agreement sets forth the terms and conditions of Hellenic's services in Greece as Agent for Universal's vessels and any other understandings are hereby merged in this Agreement and terminated.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in their names and by their respective officers thereunto duly authorized the day and year first above written.

Universal Cargo Carriers Inc.

(Stamp)

Executed in Panama, R. P., by /s/ Ida I. de Preciado.

Hellenic Lines Limited

By

[46] IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

HELLENIC LINES LIMITED ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT

(Number and title omitted)

(Filed: Feb. 14, 1966)

Comes HELLENIC LINES LIMITED, Respondent, and make the following answers to interrogatories heretofore propounded to it by libelant, the answers corresponding by number to the interrogatories:

1. (a/e) The stock of Hellenic Lines Limited is bearer stock, freely transferable like currency. Hence, the identity, citizenship and addresses of the stockholders are not reflected on the records of the respondent. However, the last meeting of stockholders were held in Piraeus, Greece on June 15, 1965, and, at that time, all shares of stock, present and voting, in person or by proxy, were in the possession of Kyriacos Arvanitis and Pericles Papadopoulos, residents of Athens and citizens of Greece. Insofar as officials of this corporation are concerned, there

are no known stockholders other than citizens of Greece.

2. See answer to No. 1.

3. (a/c) The directors, their citizenship and addresses of Hellenic Lines Limited are as follows:

[47]

Pericles G. Callimanopulos

Citizen of Greece

Meadow Brook Drive

Rock Ridge

Greenwich, Connecticut

Gregory P. Callimanopulos

Citizen of Greece

Residing in New York City

Takis Zakas

Citizen and resident of Greece

Theodore Em. Pangos

Citizen and resident of Greece

Charalambos D. Antonopulos

Citizen and resident of Greece

Pericles Papadopoulos

Citizen and resident of Greece

Frank Slater

U. S. Citizen

61 Stratford Avenue

Garden City, Long Island

Athanssios Tsemperopoulos

Citizen and resident of Greece

4. This interrogatory is excepted to as being irrelevant and placing an undue burden upon the respondent since the respondent has owned and/or operated numerous vessels during the past five (5) years, many of which have called at various ports in the United States.

5. See response to interrogatory No. 4.

6. (a/c) A copy of the operating agreement between Universal Cargo Carriers, Inc. and Hellenic [48] Lines Limited dated January 1, 1960 as attached hereto.

Hellenic Lines Limited

By s/ P. G. Callimanopulos

P. G. Callimanopulos

State of New York }
County of New York }

Personally appeared before me, the undersigned authority in and for said county in said state, P. G. Callimanopulos, who being by me first duly sworn, on oath deposes and says:

I am General Manager of Hellenic Lines Limited and as such, as authorized to make answer to the interrogatories propounded in this cause. The answers set out above to the interrogatories are true and correct.

.....

(Certificate Omitted)

[51] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

**ADDITIONAL INTERROGATORIES PROPOUNDED BY
LIBELANT TO HELLENIC LINES LTD. TO BE
ANSWERED AS REQUIRED BY THE ADMIR-
ALTY RULES**

(Number and title omitted)

1. State the names of the owners of the stock that are known to you.

- (a) State the citizenship and addresses of such owners.
 - (b) State the amount of stock that is owned by each and the percentage of the stock that is owned as it relates to the stock of the corporation as a whole.
2. You have listed the names of eight directors in your answers to prior interrogatories.
 - (a) State whether or not any of these directors own stock in said corporation.
 - (b) If your answer is yes, state the names of the owners of said stock, the amount that is owned by each, and the percentage of stock as it relates to the stock of the corporation as a whole.
3. In answers to prior interrogatories, you have answered that Pericles G. Callimanopulos and Gregory P. Callimanopulos are residents of the United States. State how long each has resided in the United States.
- [52] 4. State whether or not said corporation maintains an office in New York City.
 - (a) If your answer is yes, how long have you had such an office.
 - (b) State the address of said office. State the number of employees employed in said office.
5. State whether or not you maintain other offices in the United States and if so, the address and location of said office or offices and the number of employees engaged in said office or offices.
6. State whether or not said corporation has offices or maintains offices in other countries and if so, the addresses and location of said office or offices and the number of employees engaged in said office or offices.

7. State whether or not said corporation operates a stevedoring business in the United States or employs directly longshoremen to discharge its vessels in the United States.
 - (a) If your answer is yes, state the number of longshoremen engaged in your stevedoring business or whom you directly employ to work for you as longshoremen.
- [53] (b) State the number of vessels that are owned by said corporation. State the number of vessels including owned vessels that are operated by said corporation.
 - (c) State the number of vessels operated by said corporation that are engaged in trade either originating or terminating in the United States.
 - (d) State what percentage of freight of said corporation either originates or terminates in the United States.
8. State whether or not the vessels you operate in the United States trade carry passengers to and from the United States.
9. State whether or not you have regularly scheduled trades operating to and from the United States.
 - (a) If your answer is yes, identify these trades.
10. State the owners of the vessels that are operated by you in addition to those vessels owned by you and operated by you that are owned by Universal Cargo Carriers, Inc.
 - (a) State the number of vessels and the owners of each.
11. In addition to the vessels about which you have already answered, state whether or not you have

other vessels under charter at the present time [54] engaged in your trade.

- (a) If your answer is yes, state the number of such vessels and owners of such vessels.

Diamond and Lattof
Proctors for Libelant

By: s/ Ross Diamond, Jr.

[56] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

**ADDITIONAL INTERROGATORIES PROPOUNDED
BY LIBELANT TO UNIVERSAL CARGO CAR-
RIERS, INC., TO BE ANSWERED AS REQUIRED
BY THE ADMIRALTY RULES**

1. State the name of the owners of the stock of said corporation that are known to you.
 - (a) State the citizenship of the owners of the stock that are known to you.
 - (b) State whether or not any of the owners that are known to you maintain residences in the United States, and if so, state the names of those having residences in the United States.
 - (c) State the name of the owner of the largest amount of stock that is known to you; also state what percentage of said stock is owned by the largest single owner of the stock of said corporation.
 - (d) If the largest single owner of the stock of said corporation is a corporation, state its country of incorporation, its principal place of business and whether or not it has or maintains an office in New York City or the United States.

- (e) If the largest single owner of the stock of said corporation is an individual, state his or her citizenship and his or her place of residence.
- [57] (f) If the largest single owner of the stock of said corporation is an individual, state whether or not they maintain a residence in the United States, how long they have maintained a residence in the United States, and the address of such residence.
- 2. State whether or not the directors as named in your answers to prior interrogatories are owners of any of the stock of said corporation.
 - (a) If they are owners, state the amount of stock owned by each.
 - (b) State the percentage of stock owned by each of said directors as it relates to the entire amount of the stock of said corporation.
 - 3. State whether or not during the past five years you have operated any of the vessels which you have owned.
 - (a) If your answer is yes, state which vessels you have operated and for what period of time. If your answer is no, or if you have not operated all of your vessels during this period of time, state the person or corporation that has operated your vessels during the past five years.
 - 4. In your answers to prior interrogatories, you have stated that the principal address of said corporation [58] was in Panama City, Republic of Panama.
 - (a) State whether or not this is your registered address.
 - (b) State whether or not you maintain an office in the Republic of Panama in the usual meaning of the word "office".

- (c) State whether or not said corporation has any employees in the Republic of Panama. State whether or not said corporation does any business in the Republic of Panama.
 - (d) State whether or not the vessels of said corporation have ever loaded or discharged any cargo in the Republic of Panama.
5. State whether or not said corporation has any employees at any place.
- (a) If your answer is yes, state the number of employees.
 - (b) If your answer is yes, state where said employees are employed.

Diamond and Lattof
Proctors for Libellant

By: s/ Ross Diamond, Jr.

[67] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

**ANSWERS TO ADDITIONAL INTERROGATORIES
PROPOUNDED BY LIBELANT—BY UNIVERSAL
CARGO CARRIERS, INC.**

(Number and title omitted)

(Filed: June 9, 1966)

Comes now Universal Cargo Carriers, Inc., Respondent, and makes the following answers to additional interrogatories propounded to it by Libellant, the answers corresponding by number to the interrogatories.

1. (a-f) The stock of Universal Cargo Carriers, Inc. is owned by Hellenic Lines Ltd., a corporation organized and existing under the Shipping Cor-
- [68]

poration Laws of the Kingdom of Greece. The head office of Hellenic Lines Ltd. is in Piraeus, Greece and a branch office is maintained in New York City.

2. No.
3. No. Vessels owned by Universal Cargo Carriers, Inc. are operated by Hellenic Lines Ltd.
4. (a) Yes.
(b) The interrogatory is excepted to as ambiguous and requires amplification and explanation.
(c) Yes.
(d) See Answer to Interrogatory 3.
5. Yes.
(a) 3.
(b) Panama.

Universal Cargo Carriers, Inc.

By s/ Gerald Hennessy

Attorney-in-Fact

State of New York }
County of New York }

Personally appeared before me, the undersigned authority in and for said county in said state, Gerald Hennessy, who being by me first duly sworn on oath deposes and says: I am attorney-in-fact of Universal Cargo Carriers, Inc. and as such, am authorized to make answer to the interrogatories propounded in this cause. The answers set out [69] above to the interrogatories are true and correct.

.....
(Certificate omitted.)

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

**ANSWERS TO ADDITIONAL INTERROGATORIES
PROPOUNDED BY LIBELANT BY
HELLENIC LINES, LTD.**

(Number and title omitted)

(Filed: June 9, 1966)

Comes now Hellenic Lines, Ltd., Respondent, and makes the following answers to additional interrogatories propounded to it by Libellant, the answers corresponding by number to the interrogatories.

1. (a-b) The stock of Hellenic Lines Ltd. is bearer stock, freely transferable like currency. Hence, the identity citizenship and addresses of the stockholders are not reflected on the records of the respondent.
2. (a-b) See answer to interrogatory 1.
- [70] 3. Pericles G. Callimanopulos and Gregory P. Callimanopulos have been residents of the United States since 1947.
4. Yes.
 - (a) Since 1950.
 - (b) The Office is presently located at 39 Broadway and has a staff of about 80.
5. An office is also maintained at 319 International Trade Mart, New Orleans, Louisiana with about 12 employees.
6. Hellenic Lines Ltd. maintains its head office in Piraeus, Greece and branch offices also in England, Germany, Turkey with about 1200 office and fleet employees.

7. Yes.
- (a) About 100.
- (b) Respondent owns 16 vessels and operates about 34.
- (c) 19.
- (d) Respondent has no records allocating revenue.
8. Freight vessels have space on board for transportation of passengers.
9. Yes.
- (a) North Atlantic—Mediterranean—Persian Gulf—India—Pakistan.
10. Transpacific Carriers Corp. owns 6 vessels. [71]° Respondent is presently operating 6 vessels owned by Transpacific Carriers Corp.; and one vessel owned by Pindos Shipping Corp., one vessel owned by A/S Hilda-Christen K. Gran and one vessel owned by D/S Af 1912 (A. P. Moller, Manager).
11. See answer to additional interrogatory 10.

Hellenic Lines Limited

By s/ P. G. Callimanopulos

P. G. Callimanopulos

State of New York }
County of New York }

Personally appeared before me, the undersigned authority in and for said county in said state, P. G. Callimanopulos, who being by me first duly sworn, on oath deposes and says: I am General Manager of Hellenic Lines Limited and as such, an authorized to make answer to the interrogatories propounded in this cause. The answers set out above to the interrogatories are true and correct.

(Certificate omitted.)

**[Supp. 1] IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

(Title omitted)

This cause coming on-to be heard before the Honorable Daniel H. Thomas, United States District Judge, on the 15th day of July 1966, the same being one of the trial days of the said Court, beginning at approximately 10:00 o'clock A. M., without a jury, the following proceedings were had:

APPEARANCES

For Complainant: Messrs. Diamond, Lattof & Farve. By: Mr. Ross Diamond, Jr.

For Respondents: Messrs. Pillans, Reams, Tappan, Wood & Roberts. By: Mr. George F. Wood.

(2) The Court: All right. We are here on a motion to dismiss, I think.

[Supp. 2] Mr. Diamond: Yes, sir.

Mr. Wood: Yes, sir.

The Court: All right. Proceed, Mr. Diamond.

MR. ROBERT W. O'CONNOR,

the witness, having first been duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand and testified as follows:

Direct Examination

By Mr. Diamond

Q. Would you state your name, please, sir? A. Robert W. O'Connor.

Q. What is your business? A. President of O'Connor and Company, Inc., Steamship Agents.

Q. Is that here in Mobile? A. Mobile, Alabama.

Q. Are you agents for Hellenic Lines, Ltd.? A. Yes, sir. I am.

Q. How long have you served as agents for Hellenic Lines? A. Since the Fall of 1963, November.

Q. One of the vessels that you have serviced would be [Supp. 3] (3) the HELLENIC HERO? A. Yes, sir. The HELLENIC HERO here at Mobile.

Q. Do you have records reflecting the number of visits of the HELLENIC HERO in Mobile during your agency? A. Yes, I do. I have records reflecting the past two years as indicated in my subpoena.

Q. Would you state the number of visits the HELLENIC HERO has visited the port of Mobile? A. I have the HELLENIC HERO for only one visit.

Q. That was when? A. August, 1965, within the past two years.

Q. What are the vessels of Hellenic Lines that you have served during the time you have been agent for them? A. Well, I can go back by dates. Recently, the HELLENIC PIONEER.

Q. When was that? A. June of this year. The GREGORIUS SEA, the 3rd, in December of '65. HELLENIC HERO, August of '65. GERGORIUS SEA the 3rd, in May of '65. HELLENIC SPIRIT in May of '65. HELLENIC SPLENDOR in April of '65. HELLENIC LEADER, February of '65. HELLENIC DESTINY, September of '64. HELLENIC TORCH, August of '64.

Q. And you were appointed agent when, November? A. November of '63.

(4) Q. Does Hellenic operate a regular service out of the [Supp. 4] Gulf? A. Yes. I would say it is a regular service out of this Gulf and Mobile, as cargo justifies it.

Q. What ports do they regularly call on? A. Houston, Galveston and New Orleans.

Q. And Mobile as justified? A. Mobile as justified.

Q. Where is the service operated to? A. Hellenic Lines has three distinct services. I do not have the destinations. One is to the Mediterranean and one is to the Red Sea, Persian Gulf area, and the other one is the India-Pakistan and Burma area. They are three separate services.

Q. That is from the Gulf? A. From the Gulf. The same vessels service both areas.

Q. To your knowledge, has the HELLENIC HERO ever visited Panama? A. To my knowledge, no.

Q. What cargo do you ship out of Mobile? A. We refer to it as general cargo. The majority of time, flour, bag grain and general commodities.

Q. What cargo is delivered to Mobile by these vessels? A. Very little is delivered inbound. We have had only one inbound and that was sometime ago, iron ore.

[Supp. 5] (5) Q. In other words, most of the cargo is going out? A. Going out.

Q. They don't bring any back? A. They do, but not to Mobile.

Q. Mr. O'Connor, in your operation of this agency, with whom do you do business? A. We do business directly with the office in New Orleans, which is Hellenic Lines, Ltd., office in New Orleans. We were appointed agents by Hellenic Lines in New York.

Q. Mr. O'Connor, are you familiar with the Daily Shipping Guide issued out of New Orleans? A. Yes, sir. We subscribe to it.

Q. Is that an authentic copy of that daily shipping Guide? A. Yes, it is.

Q. Is it a reliable service? A. You mean the Daily Shipping Guide?

Q. Yes. A. Yes, sir, it is.

Mr. Diamond: I would like to offer that in evidence, the Daily Shipping Guide for July 14, 1966, which was yesterday's, reflecting Hellenic Lines regular services in the [Supp. 6] Gulf and also shown as various places; its schedule, ports of call; etcetera.

(6) Mr. Wood: We have no objection, for whatever it is worth.

(Whereupon, said Daily Shipping Guide was received and marked in evidence, Complainant's Exhibit No. 1.)

Mr. Diamond: Mr. O'Connor, are you familiar with Universal Cargo Carriers?

A. No, sir, I am not. The first occasion I had was when this present case came about.

Q. Are your fees paid out of New Orleans or New York?

A. To be explicit, they are paid from New York to New Orleans and forwarded to me from New Orleans.

Q. But you rendered services to the HELLENIC HERO when she was in and other Hellenic vessels also? A. I performed the usual procedures of filling all invoices, care of the vessels and/or owners.

Mr. Diamond: No further questions.

Cross-Examination

By Mr. Wood

Q. Mr. O'Connor, going back to Universal Cargo [Supp. 7] Carriers, Inc., you say you were not aware of them until sometime—you started to say and then stopped—when were you first aware of the existence of Universal Cargo Carriers, Inc.? (7) A. The first awareness of Universal Cargo Carriers was when this case was sent, with reference to the HELLENIC HERO on which I referred the matter to you and in which Universal Cargo Carriers was represented. I have no knowledge of them.

Q. You have signed an affidavit to that effect? A. Yes, sir, I have.

Q. Are you agents for Universal Cargo Carriers, Inc.?

A. Not as such; no, sir.

Q. Have you ever acted for them, to your knowledge, as an agent in transactions or otherwise? A. No, sir. I never have. I have a copy of my appointment from Hellenic Lines as agent and it makes no reference to any other vessels other than Hellenic Lines vessels. It outlines all of the terms and stipulations that we are to perform under.

Mr. Diamond: May I see it?

A. Yes, sir.

Mr. Diamond: Your Honor, I would like to offer in evidence [Supp. 8] this document and substitute a copy of it and get the original back to Mr. O'Connor, if I may.

The Court: All right.

(Whereupon, said Appointment as Agent to Hellenic Lines was received and marked in evidence, Complainant's Exhibit No. 2.)

(8) Mr. Wood: I don't believe I have any further questions.

The Court: Anything else?

Mr. Diamond: No, sir.

The Court: Mr. O'Connor, you may step down.

Mr. Diamond: Judge, I want to offer in evidence my original interrogatories to Hellenic and my original interrogatories to Universal, the answers to Hellenic and Universal, and my additional interrogatories to both companies. I also want to offer the answers to the additional interrogatories of both companies.

[Supp. 9] I would like to offer in evidence my motion, the last one I filed, alternative motion, for order requiring

more complete answers to interrogatories and for other relief, with affidavits attached thereto.

Mr. Wood: Now, we object to the offer of the motion in evidence. If he wants to put the affidavit in, all right.

The Court: Well, it is all in anyway.

Mr. Wood: It is in the file.

The Court: I don't think it has to be offered. I think it is already in.

Mr. Diamond: Well, I would also like to offer in evidence the deposition of P. T. Callinopolous, which was taken in proceedings in the United States District Court of the (9) Eastern District of Virginia, Newport News Division, in Admiralty 724, Admiralty 739, 740, 742 and Admiralty 756.

The Court: That was not taken in this case?

Mr. Diamond: No, sir. I am offering it by way of impeachment. I have the interrogatories in evidence. Mr. [Supp. 10] Callinopolous, or whatever his name is, has refused to answer the interrogatories, certain phases of them, and in this there is evidence of the true ownership of the various companies and evidence reflecting its operation, and I think it would be pertinent to this proceeding.

Mr. Wood: Now, if it please the Court, we are in a different position in objecting to these. I don't care if the facts in here go in, but I think I should make an objection to the introduction of this deposition in that it was expressly taken for use in these cases only.

As the witness says, if you don't mind, and I will read his statement from the deposition, "For the purposes of these cases only—this is the fact that he wanted it restricted to—"It is admitted that the beneficial interest is better than 95 percent of the stock of Hellenic Lines, Ltd., Trans-Pacific Carriers Corporation and Universal Cargo

Carriers is owned by me and my family. I am a citizen of Greece and now live in the United States."

We think there is just something objectionable by (10) offering a deposition taken for specific cases and otherwise think they are not admissible in evidence in this case, even aside from the fact that—

Mr. Diamond: I would like for the Court to reserve its [Supp. 11] ruling on that until the answers of the interrogatories he has filed comes in.

The Court: All right. I will reserve my ruling.

Mr. Diamond: That's all.

Mr. Wood: I believe that's all the evidence, your Honor.

The Court: All right. I will rule on this matter as soon as possible.

Court will stand adjourned.

(Certificate Omitted.)

[Supp. 12]

Certificate

United States of America

In the United States District Court for
the Southern District of Alabama

I, William J. O'Connor, Clerk of said Court do hereby certify that the foregoing Eleven (11) Pages, Numbered One Hundred Seventy-One (171) Through One Hundred Eighty-One (181) Inclusive, contain the original transcript of the trial held on July 15, 1966 in said Court in the case of Admiralty No. 3165, Zacharias Rhoditis v. Hellenic Lines, Ltd., and the SS HELLENIC HERO, her engines, cargo, boilers, tackle, etc., as fully as the same appear of record in my office as such Clerk.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the seal of the United States District

Court for the Southern District of Alabama, at Mobile, Alabama, this the 17th day of April, 1968.

s/ William J. O'Connor
William J. O'Connor, Clerk
United States District Court
Southern District of Alabama

(Seal)

[79] **MOTION FOR ORDER APPLYING
JONES ACT**

(Number and title omitted) (Filed: July 15, 1966)

Comes the Libelant, by and through his proctor of record in this cause, and moves the Court for an order or decree ruling that the Jones Act is or will be applicable in this proceeding.

Diamond and Lattof

By: s/ Ross Diamond, Jr.
Proctor for Libelant

[80] **ORDER DENYING PLEA TO
JURISDICTION**

Minute Entry August 2, 1966 Daniel H. Thomas
(Number and title omitted)

After consideration by the Court, it is

Ordered and Adjudged that the Plea to Jurisdiction of the subject matter, filed on September 13, 1965 by respondent Hellenic Lines, Ltd and submitted after argument on July 15, 1966 is Denied.

Done at Mobile, Alabama this the 2nd day of August, 1966.

Daniel H. Thomas
United States District Judge

**[81] MOTION TO RECONSIDER AND MOTION
TO DISMISS**

(Number and title omitted)

(Filed: Aug. 16, 1966)

Comes the respondent, Hellenic Lines Limited, and moves this Honorable Court to reconsider its ruling of August 2, 1966, in which the motion of this respondent to dismiss the libel on lack of jurisdiction of the subject matter was denied, and as a further and separate motion, moves the Court to dismiss this cause in the exercise of its discretionary power because of the difficulty and impracticability of trying the matter in this district; and as grounds therefor sets forth the following:

Not only is this a libel filed by a Greek citizen against a Greek shipowner for an injury on a Greek flag vessel, libelant having signed on in Greece, with Greek Articles and with express agreement that all claims arising between libelant and respondent be decided by Greek law; but

In addition, libelant is a resident of Greece and is either presently residing in Greece or sailing from Greek ports; all the witnesses on behalf of both parties, except for the initial treating physician, are Greek citizens residing in Greece or sailing from Greek ports; and all medical attention given to the libelant except initial treatment was accomplished in Greece and witnesses as to the nature of his recovery and present condition are in Greece.

[82] There are no parties or witnesses in this district and in order to try the matter here, all testimony would have to be taken by deposition or witnesses brought to this district at great expense.

Respondent further shows that it is subject to process in Greece where all the parties and witnesses reside.

The premises considered, respondent prays that this Honorable Court will grant it a hearing on this motion for

reconsideration, and on its motion for a dismissal under the discretionary powers of the Court. Respondent further prays that upon hearing, that this Honorable Court will dismiss this libel either for lack of jurisdiction over the subject matter; or will decline to entertain the cause for reasons of difficulty and impracticability of trying it in this district.

Respectfully submitted,

s/ George T. Wood

For Pillans, Reams, Tappan, Wood & Roberts
Proctors for Hellenic Lines Limited

Motion Denied

Motion to dismiss

Dated: 12/29/66

s/ Daniel H. Thomas
U. S. D. J.

**[83] ORDER GRANTING MOTION TO RECONSIDER
COURT'S RULING OF AUGUST 2, 1966**

Minute Entry October 21, 1966. Daniel H. Thomas

(Number and title omitted)

The above entitled cause coming on to be heard on this date on Motion to reconsider the court's ruling of August 2, 1966 which denied motion of respondent, Hellenic [84] Lines, Limited, to dismiss the libel, it is Ordered that the motion to reconsider is Granted.

Further Ordered that the motion of respondent, Hellenic Lines Limited to dismiss is taken under Submission.

Done at Mobile, Alabama, this the 21st day of October, 1966.

Daniel H. Thomas
District Judge

ANSWER TO LIBEL AS AMENDED

(Number and title omitted)

(Filed: April 27, 1967)

Comes the respondent Hellenic Lines Limited and the claimant Universal Cargo Carriers, Inc., and for answer to the libel heretofore filed in this cause, as amended, avers on information and belief as follows:

I

It is admitted that Hellenic Lines Limited is a Greek corporation and Universal Cargo Carriers, Inc., is a Panamanian corporation. It is denied that Universal Cargo Carriers has ever done any business, or is now doing business, in the City of Mobile, State of Alabama.

II

It is admitted that Universal Cargo Carriers, Inc. is the owner of the SS HELLENIC HERO and that Hellenic Lines Limited operates said vessel, exercises full control thereof, and, among other things, was the employer [85] of the seamen serving aboard the SS HELLENIC HERO on the dates pertinent to this action.

III

It is admitted that at the time of the filing of the libel the vessel was in the Port of Mobile. It is denied that said vessel was engaged exclusively in foreign commerce between the ports of the United States and foreign ports but says instead that said vessel traded between ports all over the world.

IV

The allegations of Article Four of the libel are denied.

V

The allegations of Article Five are denied.

VI

It is admitted that on or about the 3rd day of August, 1965 libelant was a member of the crew of said vessel, at monthly wages of 40 British pounds per month plus over-time and found.

VII

Except as to the allegation that libelant was injured on or about the 3rd day of August, 1965, in the Port of New Orleans, La., the allegations of Article Seven are denied.

[86]

VIII

The allegations of Article Eight of the libel are denied.

IX

The allegations of Article Nine of the libel are denied.

X

Except as admitted herein, all the allegations of the libel are denied. Respondent and claimant expressly deny the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

As a Further and Separate Complete Defense, Respondent and Claimant Aver as Follows:

XI

The averments of Articles I-X of this answer are repeated and re-averred as fully as if restated here.

XII

The SS HELLENIC HERO is a Greek flag vessel, operated by Hellenic Lines Limited, a corporation organized

and existing under and by virtue of the laws of Greece. Said corporation has existed as a Greek corporation since 1934 and none of the stockholders, officers or directors are citizens of the United States. Libelant is a citizen of Greece and was engaged for service abroad the HELLENIC HERO in Greece under and pursuant to the Greek [87] Collective Agreement. Under the terms of the contract of employment it was expressly agreed between libelant and Hellenic Lines Limited that Greek law should govern. The libelant was a resident of Greece at the time he signed aboard said vessel and returned to Greece following the injury with which this suit is concerned.

XIII

The libel does not plead nor seek application of the provisions of Greek law and American law is not applicable to this cause.

For a Further and Separate Defense, Respondent and Claimant Further Aver;

XIV

The averments of Paragraphs I-XIII are repeated and re-averred as fully as if re-stated here.

XV

All of the members of the crew of the HELLENIC HERO at the time of the alleged injury to libelant were citizens and residents of Greece. After the initial treatment of libelant's injuries in the Port of New Orleans, all further medical treatment was carried on in Greece. No witnesses, either to the occurrence of the injury or to the treatment and present condition of the libelant are within this district and only the initial treating physicians are in the United States.

[88] Respondent is present in Greece and is amenable to service there. Respondent stands ready to accord to libel-

ant all benefits to which he is entitled under the laws of Greece.

The premises considered, this cause should be heard in the Courts of Greece, where both libelant and respondent are domiciled.

The premises considered, respondent and claimant pray that, after hearing, the libel herein be dismissed.

s/ George F. Wood

For Pillans, Reams, Tappan, Wood & Roberts
Attorneys for Respondent and Claimant

[108] **MR. GERALD HENNESEY,**
the witness, being first duly sworn to tell the truth, the whole truth and nothing but the truth, took the stand and testified as follows:

Direct Examination

By Mr. Wood

Q. Would you state your name, please, sir? A. Gerald Hennesey.

Q. Where do you live? A. Lake Shawnee, R. D. 3, Warton, New Jersey.

Q. By whom are you employed? A. Hellenic Lines, Limited, in New York City.

Q. In what capacity? A. I am the manager of the
[109] Insurance and Claims Department of the New York office.

Q. How long have you been employed by the Hellenic Lines Limited? A. Approximately six years.

(19) Q. During that time Mr. Hennesey, have you become familiar with the corporate organization and activities of Hellenic Lines Limited? A. Yes, sir, I have.

Q. Is that true also of the subsidiary companies? A. Yes.

Q. Now, directing your attention to the company known as Universal Cargo Carriers, Inc., are you familiar with that corporation? A. Yes, sir.

Q. What is its corporate structure, please, sir

The Court: Let me interrupt. Now, from your previous statement, Mr. Wood, it is my understanding that Mr. Hennesey is a graduate lawyer though not practicing.

A. That is correct.

The Court: All right. Go ahead.

Mr. Wood: All right. What is the structure of that company?

[110] A. Universal Cargo Carriers, Inc., is a corporation organized—

Mr. Diamond: Mr. Hennesey, excuse me a minute. I would like to restate or ask the Court for a continuing objection as to any matters pertaining to the question of jurisdiction.

The Court: All right. You have a continuing (20) objection. Go ahead.

A. It was organized in about 1956 in Panama.

The Court: '56?

A. Yes, sir.

The Court: All right.

A. And is solely a holding corporation. The stock of which is one hundred per cent owned by Hellenic Lines Limited.

Q. What type of stock is that? A. Bearer stock.

Q. What is its relation to HELLENIC HERO? A. It is the registered owner of the vessel.

Q. Does it operate this vessel? A. No, sir. The operation of the HELLENIC HERO is under the control exclusively of Hellenic Lines Limited.

Mr. Diamond: I would like—for Mr. Wood—I don't know as to the time element that he is speaking of. I think the pertinent time period would be the date of the injury, August 3, 1965, as to the questions of operation and other matters which you may ask him about.

Mr. Wood: Mr. Hennesey, are the answers you have made true with respect to the date of the injury of the Libelant in this case?

A. Yes, sir, not only in 1965 but as of today.

Q. Today also? A. Yes, sir.

(21) Mr. Wood: I would like to have this marked for identification, please.

(Whereupon, said contract between Universal and Hellenic was received and marked for identification, "Respondents' Exhibit No. 5".)

Mr. Wood: I show you Respondents' Exhibit 5, for identification, and ask you to state to the Court what that [112] is, please, sir?

A. This is a contract between Universal Cargo Carriers, Inc., and Hellenic Lines, Limited, under which Hellenic Lines undertakes to operate the vessels that are registered in the name of Universal Cargo Carriers.

Q. Does that include the HELLENIC HERO? A. The HELLENIC HERO.

Mr. Wood: We would like to offer this in evidence.

(Whereupon, said contract between Universal and Hellenic was received and marked in evidence, "Respondents' Exhibit No. 5".)

Mr. Wood: Now, Mr. Hennesey, who employs the crews for the vessels that Hellenic Lines operates?

A. We have some thirty-six vessels under our control and all of these crews are furnished by the home office in Piraeus, Greece.

Q. Who is the employer of the seamen on these vessels? A. Hellenic Lines Limited.

(22) Q. Now, what other companies, please, besides Universal Cargo Carriers, Inc., are affiliated with or [113] wholly owned by Hellenic Lines? A. We have another Panamanian corporation, Trans-Pacific Carriers, Inc. We have a subsidiary in London, Finton Steamship Corporation. We have a subsidiary in Germany, Deutsche Hellenische. We have another corporation in Turkey. I can't even spell that one. We have one in Hamburg. We have five of them, right.

Q. To shorten the time, Mr. Hennesey, did you bring with you a list of the vessels which, on the date of this injury and as of today, are owned by Hellenic Lines and the various affiliated companies? A. Yes, sir. These are the thirty-six vessels which Hellenic Lines are now operating solely owned by it or its subsidiaries.

Q. Let me ask you, sir, if there has been any change since August of 1965? A. Yes, since August of '65—

Mr. Wood: Wait, let me identify this before you answer that.

(Whereupon, said list of ships owned by Hellenic Lines was received and marked in evidence, "Respondents' Exhibit No. 6".)

[114] Mr. Wood: All right. Referring then to Respondents' (23) Exhibit 6, please, would you state what changes, if any, have occurred since August of 1965 with regard to ownership.

A. Hellenic Lines, Limited, has taken on the LONDINON, which is operated in the U. K. Lavant Service. It has also taken on the ITALIA, which is presently on its maiden voyage, we hope, to Europe.

Trans-Pacific Cargo Carriers, Inc., which is the Livorno and Universal Cargo Carriers, Inc., has taken on the

HELLENIC HALCYON, the HELLENIC DOLPHIN, the HELLENIC SUNBEAM and the HELLENIC CHARM.

Mr. Wood: We would like then to offer this in evidence.

Now, Mr. Hennesy, if I may talk a minute about Hellenic Lines, Limited, itself, when and where was Hellenic Lines, Limited, formed?

A. This corporation was organized and is existing under the laws of the Kingdom of Greece since 1934.

Q. Who was the moving spirit behind the formation of this corporation at its beginning? A. Mr. Pericles Callimanopoulos.

Q. And is this gentleman still active in the affairs of [115] this corporation? A. Very much so.

Q. What type of stock does Hellenic Lines have? A. It is bearer stock.

(24) Q. Do you know, as of now, the ownership of this stock? A. Mr. Callimanopoulos owns about ninety-nine per cent of the company.

Q. So far as you know, Mr. Hennesey, is any of the other, the minority of one per cent, owned by any citizen of the United States? A. No, sir.

Q. What is the citizenship of Mr. Callimanopoulos? A. He is a Greek citizen.

Q. Do you know the citizenship of the owners and directors of Hellenic Lines, Limited? A. Yes, sir. They are all citizens of Greece.

Q. Do you know the residence of the officers and directors—now, exclusive of Mr. Callimanopoulos—of Hellenic Lines, Limited? A. Yes. The majority of them are residents and citizens of Greece and one or two may be residents of England, but are also directors of Hellenic Lines, Limited.

Q. Where does Mr. Callimanopoulos reside? A. In Greenwich, Connecticut.

[116] Q. Do you know when he became a resident of the United States? A. He came to the United States first in about 1945 as a treaty trader. He remained in the United States except for various absences as a treaty trader until about 1952 when (25) I believe, he became a resident alien. In approximately 1963 his status was changed from that of a resident alien to a plain alien who is here under a diplomatic passport representing the government of Greece as its delegate to the United Nations and acting on behalf of the Greek Ministry of Mercantile Marine, which is equivalent to our Department of Maritime Administration.

Q. Now, where does Hellenic Lines maintain offices, Mr. Hennesey? A. Well, we have our home office in Piraeus, Greece. We have an office in New York, an office in New Orleans, in the United States, and we have offices and/or agents throughout the world.

Q. Now, what, please, if you will outline to the Court, is the nature of the activities carried on by your office in Piraeus and your office in New York and your office in New Orleans and elsewhere? A. Well, of course, the corporation is engaged in the transportation business. [117] Our offices and our agencies are always soliciting cargo. In the United States there is a heavier movement of cargo to and from than elsewhere so that our offices in New Orleans and New York are always seeking cargoes either to and from the United States or elsewhere. The same thing applies to the office in Piraeus. They are in contact with the agencies throughout the world then of (26) movements to cargo from Greece either to the United States or elsewhere. When they hear of a large parcel of cargo being moved they let us know or the agent and then we solicit that business very actively.

Q. How about collection of freights, for example? A. Well, the collection of freights in many cases depends upon the country to which the cargo is going. As you

are aware, in some instances we are dealing with blocked currency.

The Court: With what?

A. Blocked currency, which is not freely transferrable. For instance, cargoes going to Egypt, the government will not allow receivers to pay in U. S. dollars and you may have to collect your freight in Egyptian. That isn't too bad, because in Egypt you always have canal toll dues which is paid from these blocked funds. The same—it is the same way in Pakistan and other places, but [118] you can take our freight in ship repairs and such as that to handle repairs to the vessel, et cetera. Naturally, we like to get our freights paid in U. S. dollars where we can. I would like to say even with the movement of aid cargo, which is sponsored by the government, in many instances we are able to obtain this cargo because we can take a blocked currency such as Egyptian pounds and have a portion of it paid in Egypt and also a portion payable by the U. S. Government in drachmae.

Q. Now, do you have any agencies by any other names in (27) and around the world, Mr. Hennesey, or representatives? A. By any other names. Well, they would be operating under their own names.

Q. Who would be these people that represent you elsewhere? A. Well, for instance, in Texas we have LeBlanc-Parr. Other places we have Furniss-Whitney.

Q. Are these regular steamship agencies? A. Yes. We have representatives in Calcutta, in Bombay. In Bombay we have Shore-Wallace, who operate in Bombay, and in Madras. These are regular steamship agents who have subsidiary offices throughout the country in which they are operating.

Q. Would you compare for the Court the number of [119] employees at your various offices?

Mr. Diamond: I am going to object. It is not specific as to the place or time.

Mr. Wood: All right. As of the time of this accident.

A. I. would say we have about fifteen employees in the New Orleans office.

Q. Are you speaking of August, 1965? A. Correct. We have approximately seventy in the New York office—seventy or seventy-five, and we have about sixty to seventy in Piraeus. We also have an employee that is stationed in Genoa. We have another employee that operates between Beirut, Lebanon, and Basrah, and flies back to Beirut. (28) We have another man stationed permanently in Calcutta and these men, of course, are on the Piraeus payroll.

Q. Mr. Hennesey, of what ports of the world do Hellenic Lines' vessels call? A. Well, we are operating right now in what we call six trade routes. We have one trade route which we call the New York Met Service. It operates from New York down as far as Savannah and comes back to New York and then goes out through the various ports in the Mediterranean and first stop [120] coming back through Italy, Portugal and New York and around again.

Then we have a second route going from U. S. Gulf ports to the North Atlantic and to the Red Sea. They would generally terminate at or around to Basrah and go on to Bombay and pick up a cargo and back to the United States.

The third trade route would be the one going as far as India and Pakistan, east and west, and also Burma. Then we have a service which we call the U. K. North Levant Service which operates by the Piraeus office from continental ports to ports in the Black Sea.

The next trade route is the South Levant Service and that is the other side of the Mediterranean, and the third

trade route operated by Piraeus is from the Adriatic and Black Seas to ports in East and South Africa.

The last three routes I mentioned, I think, there are (29) fourteen vessels assigned to those services and none of those ships come to the United States whatsoever.

Q. Now, did you have any of these lines in August of 1965? A. Yes. We had all except the last one. The African service is something we started within the past six months.

Q. Did you, at that time, own vessels that never [121] called at the United States? A. Yes, sir.

Mr. Wood: Please mark these two sheets for identification.

(Whereupon, said Position Lists were received and marked for identification, "Respondents' Exhibits No. 7 and No. 8".)

Mr. Wood: I will show you Respondents' Exhibits, for identification numbers 7 and 8, and ask you what those are, please, sir?

A. Number 7 is a weekly position list put out by the home office in Piraeus, Greece, and covers the movements and itinerary of all vessels in the fleet on the six trade routes.

Number 8 is a position list put out by the New York Office on a weekly basis and represents the position of the various vessels and their itineraries in the Trans-Atlantic services.

Q. Are these prepared in the regular course of business? A. Yes, sir.

[122] (30) Mr. Wood: I would like to offer these in evidence for whatever information they may have for the Court.

Mr. Diamond: I would take it, Your Honor, that all of his testimony is on the question of jurisdiction and that my objections would still be good.

The Court: That is correct.

(Whereupon, said Position Lists were received and marked in evidence, "Respondents' Exhibits No. 7 and No. 8".)

Mr. Wood: Now, Mr. Hennesey, I draw to your attention, looking at Respondents' Exhibits 7 and 8—I should say Respondents' Exhibits 7. There are some by American estimates, odd names of the masters. Can you tell me the nationality of all of the masters?

A. All of our crews are one hundred per cent Greek.

Q. Does that include the masters and officers? A. Yes, sir. I might point out on that Position List the master of the HELLENIC HERO, at the time of this accident, was John Delagrammataskis. He is now in command of the TURKIA, which is now in the Mediterranean, Serv-[123] ice. The former chief officer on the date of the accident was Mr. Boletis, and he is now in command of the HELLENIC LEADER, I believe, which is presently proceeding from Savannah to New York by way of Charleston.

Q. Now, you say all seamen, officers and masters are (31) Greek? A. Yes.

Q. At what ports do these crew members sign on? A. The customary port is Piraeus, Greece. The vessels in the Indian service may not have cargo and they stop off at the island of Crete. The port there is Heraklion and the changes in crews, if any, are made there.

Q. Does the Greek government have anything to do with the crews of the vessels or officers? A. The government sets the standards for the officers and masters of the vessels. Our men must comply with the standards set down by the Greek government and are duly licensed by them. Also, the unions negotiate with the government in Greece in respect to the hours and conditions and terms of employment, and when the collective agreement

is ratified by the Greek ship owners and the Greek government, that becomes the scale for all vessels flying the flag of Greece.

[124] Q. What is the collective agreement? A. This is the terms and conditions of employment for all men except captains on the vessels under Greek flags.

Q. Who is the agreement between? A. It is between the Greek shipowners and the union of Greek seamen.

Q. Now, the Libelant in this case, Rhoditis, where did he (32) sign on? A. He signed on at Hericalioan, Crete.

Mr. Wood: Mark this as the next exhibit, please.

(Whereupon, said contract of employment of Mr. Rhoditis was received and marked for identification, "Respondents' Exhibit No. 9".)

Mr. Wood: Is this correct that this is the copy of the employment contract of Rhoditis on the voyage for which he was injured or on which he was injured?

A. Yes, sir.

Q. Is that an accurate translation of it attached to it? A. Yes, sir.

[125] Q. As a matter of fact, that was furnished me by you, was it not? A. Yes, sir, and I obtained it from the vessel.

Mr. Wood: I would like then to offer in evidence this employment contract.

The Court: All right. Under the same conditions.

(Whereupon, said employment contract was received and marked in evidence, "Respondents' Exhibit No. 9".)

Mr. Wood: Now, Mr. Hennesey, would you read, please, paragraph three at the bottom of that page?

A. It is entitled "Applicable Law and Jurisdiction".

This contract shall be governed solely and exclusively (33) by the laws of Greece and the Greek collective agreements.

It is further agreed that any claim or dispute, whether arising out of this engagement or contract or howsoever founded directly or indirectly on this contract or founded directly or indirectly on any work done or service rendered on board by the seaman, shall be adjudged or adjudicated solely and exclusively by the courts of Greece.

[126] Q. Thank you, sir.

Was that a standard type of employment contract such as the other seamen signed on Hellenic Lines vessels, at this time? A. This is the uniform contract.

Q. Now, the HELLENIC HERO, under the laws of what country is she registered and documented? A. Well, the vessel is owned by Universal Cargoes, Inc., of Panama. However, she is registered at Piraeus, and flies the flag of Greece and registered to do business in Piraeus.

Q. On what date was she employed? A. I believe she was in the Indian service.

Q. Between what ports generally would that be? A. That would be from the U. S. Gulf via North Atlantic to India and Pakistan and return.

Q. Now, Mr. Hennesey, at the time he signed on the HELLENIC HERO, what was the citizenship of Rhoditis, the Libellant? (34) A. He was a citizen of Greece.

Q. Do you know where his residence was, at that time? A. Yes, sir. To refresh my recollection—

Q. Just give me the country, if you know the country. [127] A. He was a resident of Greece.

Q. All right. Now, after Rhoditis was hurt in New Orleans, where was he treated, Mr. Hennesey? A. In New Orleans.

Q. Do you recall about what period of time this covered? A. I believe that he was admitted to the hospital on Au-

gust 3 and he was released around August 14th, and we patriated through the efforts of our office in New Orleans to London and then to Greece.

Q. He was then returned to Greece? A. Yes, sir.

Q. By whom were his expenses, his medical expenses in New Orleans, paid, please, sir? A. Hellenic Lines, Limited.

Q. By whom was his repatriation paid? A. Hellenic Lines, Limited.

Q. Do you know whether or not any treatment was afforded to Rhoditis on his return to Greece? A. Yes, sir. I believe he was examined by the doctors there.

Q. Who paid for his treatment in Greece? (35) A. Hellenic Lines, Limited.

Q. Do you know, Mr. Hennesey, whether any other sums have been paid to Rhoditis other than these medical [128] expenses and the transportation? A. I believe he received four thousand—

Mr. Diamond: I object to what he believes he received.

A. He did receive four thousand eight hundred drachmaes from our office in Piraeus.

The Court: Converted what?

A. The drachmaes, to be converted, would be about a hundred and sixty dollars.

Q. What was his monthly wage? A. Forty pounds or a hundred and twelve dollars a month.

The Court: May I ask this, the hundred and sixty dollars that he received after he was back in Greece, what was that for, please?

A. I believe that represented illness wages.

The Court: Is that what we commonly refer to as cure?

A. No, sir.

The Court: Maintenance?

A. No, sir. When a man is injured in the United States and does not require hospitalization, I put him up [129] at a hotel and I also give the man a sum of money for his meals while he remains an out patient.

(36) Now, in addition to that, by the law of Greece, he is entitled to illness wages and the amount of the wages depends upon whether he is hospitalized or not. If he is hospitalized they are about fifty per cent of his normal salary. If he is not hospitalized they represent about seventy per cent of his normal salary so that these are almost in the nature of compensation payments.

The Court: All right. Go ahead.

Mr. Wood: Without then being specific, Mr. Hennesey, in the case of Greek seamen injured under the laws of Greece, what would you say was the nature of the remedy that that seaman has?

A. They may apply to the court of—

Mr. Diamond: Excuse me, Mr. Hennesey. Would you restate your question, Mr. Wood?

Mr. Wood: Let me rephrase it.

Mr. Diamond: Are you qualifying him as an expert on Greek law?

[130] Mr. Wood: No. Mr. Hennesey is engaged in settling claims under Greek law. That is a part of his job. We think he has knowledge generally, but not specifically of the law.

What I would like to know is whether it is compensation law or what classification under Greek law could you do that, Mr. Hennesey?

Mr. Diamond: I object to that.

(37) The Court: I am interested in knowing. Go ahead.

A. Yes, sir. When a man is injured, he may apply to the Piraeus Court of First Instance in Piraeus, Greece, who then appoint a body of three doctors which examine the man and make findings in respects to his disability and its permanency. Then the court hears testimony in respect to the manner in which the injury occurred. If it is an ordinary shipboard accident, an award is made to the man without regard to fault.

The Court: Now, wait. If it is a shipboard accident an award is made to him without regard to fault?

A. Right.

[131] The Court: All right. Go ahead.

A. However, if in the course of its investigation, any serious accident is investigated by the Greek Harbor Master closest to the scene where the accident has occurred, and that applies whether the accident is in New Orleans, New York, Bombay, Rangoon, Karachi, any place in the world the Greek Harbor Master closest to the scene of a serious casualty, if it is not done there, then it is done by the Greek authorities in Piraeus when the captain returns. This investigation is a very thorough and painstaking one and if they find that the captain or the vessel failed in some statutory duty owed to the man, then at this Piraeus court of the First Instance, they may make him an award of (38) indemnity aside from the rights of compensation.

The Court: Would that be in the nature of punitive damages?

A. Yes, sir.

The Court: All right. Take about a five minute recess.

(Whereupon, a short recess was taken, after which the following occurred:)

[132] The Court: Proceed, please.

Mr. Wood: Mr. Hennesey, how many Greek seamen are employed by Hellenic Lines, Limited?

A. Approximately eleven hundred.

Mr. Wood: That is it?

The Court: That is the entire operation?

A. Yes, sir, all thirty-six vessels.

The Court: How many did you say, eleven hundred?

A. Yes, sir.

Mr. Wood: Are you familiar with the procedure in Greece for the handling of claims for seamen injured aboard the vessel?

A. Yes, sir.

Q. Would you state for the Court what that procedure is. A. When a man returns to Greece, the office in Piraeus sees to it he gets the required medical treatment and the benefits which he is entitled to under the laws of Greece.

[133] (39) The Court: That is in the nature of longshoremen hospital compensation under the Greek law?

A. Yes, sir. He need proceed no further than that. If he is dissatisfied then he can take it to the court, but he gets it automatically.

The Court: Now, Mr. Hennesey, is he limited to the compensation act or the equivalent of it?

A. Unless the court finds willful disobedience of the statutory duty.

The Court: Then the punitive statute comes in?

A. Yes, sir.

The Court: Go ahead.

Mr. Wood: Now, do you have any claims pending in the United States from the Greek seamen?

A. In suit?

Q. Yes, sir. A. Yes, we do. I have one pending in Houston. I have one pending in New York involving four crew members.

[134] The Court: Were those in state courts or federal?

A. Federal.

The Court: Which judges, according to your contention, have made that mistake?

A. Well, of course, the court in which the suit was filed was at the option of the libellant.

The Court: That's right.

(40) A. I have five pending in Norfolk and that is the extent of our litigation in the United States. I have none pending in any other jurisdiction other than Greece.

Mr. Wood: All of these are under attack from the jurisdictional standpoint, are they not?

A. Yes, sir.

The Court: May I ask this, since you have been claims manager, how many have proceeded to trial in the United States Courts, either federal or state, in which you have raised this jurisdictional defense, proceeded to disposition?

A. Only one, Your Honor, and the court held that [135] American law did not apply. That was affirmed by the Second Circuit.

The Court: That was a New York case?

A. And certiorari was denied by the Supreme Court.

The Court: You only had one to proceed to conclusion?

A. That's right.

Mr. Wood: That is the one that was dismissed or one prior to that?

A. One was filled within the last five months and the status of that is that we are on a motion for summary

judgment which we expect to have heard within the next fortnight.

The Court: How far has the case in Houston proceeded? Now, you understand I realize you have a hundred claims and you can't keep them all in your head.

(41) A. The case in Houston is still actually in the claims stage. By that, I mean, we are negotiating with the attorney.

The Court: Is it in court?

A. It is in court and papers have been filed, but [136] it is in abeyance.

Mr. Wood: How about the ones in Norfolk?

A. Judge Hoffman in Norfolk has been reserving decision on the jurisdictional question for the past four years.

The Court: He is further behind than I am.

Mr. Wood: Now, Mr. Hennesey, is Hellenic Lines present in Greece and subject to the courts there?

A. Oh, yes. We are governed by the laws of Greece both as a shipping company and we pay our taxes and all of our employees are there and that is our home office. That is it, so far as we are concerned.

Q. Now, with regard to this case here, do you stand ready to respond by a claim by Rhoditis in Greece? A. All he has to do is go into the office in Greece and we will settle on whatever he is entitled to.

Q. Now, just the other brief series of questions, Mr. Hennesey. We have spoken of many things that have gone on in Piraeus. What other business activities do you carry on in Greece? I am speaking of Hellenic Lines, of course, besides what we have been talking about. A. Well, as a shipping company we are interested, [137] of (42) course, in obtaining crew members for our vessels. We obtain stores for our ships. We carry out repairs there.

The four vessels that we recently acquired from the Chilean line were reconditions in Piraeus. We have one vessel, the HELLAS, that will undergo extensive repairs in Piraeus. It is our home port. When you bring your car into the garage at home you have many things to do with it.

Q. Where are stockholder and directors' meetings held?
A. All in Piraeus.

Q. Where are masters' accounts? A. They are all taken care of by the Piraeus office.

Q. Are you required to prepare official journals there in Greece? A. By the laws of Greece, yes.

Mr. Wood: I believe that's all I have. Your witness.

The Court: Mr. Diamond, your cross-examination will be not that lengthy, but of some length?

Mr. Diamond: It is not going to be short.

The Court: Well, let's take a recess for a few minutes here.

[138] (Whereupon, a recess was taken, after which the following occurred:)

The Court: All right. Proceed, Mr. Diamond.

(43)

Cross-Examination

By Mr. Diamond

Q. By whom are you employed? A. Hellenic Lines, Limited.

Q. How long have you been employed there? A. Approximately six years.

Q. In what capacity? A. Manager of the insurance and claims department of the New York office.

Q. You are not a stockholder of Hellenic Lines or of Universal Cargo Carriers? A. No, sir.

Q. You are not an officer of either corporation? A. No, sir.

Q. Nor a director of either corporation? A. No, sir.

Q. As to Universal Cargo Carriers, who is the owner of that corporation? A. Hellenic Lines, Limited.

Q. Who is the owner of Hellenic Lines? [139] A. The majority stockholder is Mr. Callimanopoulos.

Q. How much of it does he own? A. I would say ninety-nine per cent.

Q. Mr. Callimanopoulos runs the corporation, does he not? A. He is the managing director of the corporation.

(44) Q. Does that mean that he runs the corporation? A. Well, insofar as any corporation is run by the chief executive officer, yes.

Q. Where does Mr. Callimanopoulos live? A. He resides in Greenwich, Connecticut.

Q. And he has resided in New York since 1945? A. No, sir.

The Court: You mean in Connecticut.

Mr. Diamond: Yes, in Connecticut.

A. In the United States since 1945.

Q. And he maintains offices in New York since that time? A. No. I don't believe that we had an office in New York in 1945. At that time, we were operating through an agency. I think that we opened our own office about 1950.

[140] Q. Where is the offices located? A. 39 Broadway.

Q. Mr. Callimanopoulos has raised his family in the United States, hasn't he? A. No, sir.

Q. Does he have a family? A. He has a family, a daughter—two daughters and a son, and I couldn't say whether they were raised here or not. I don't believe they were.

Q. Because of their age? A. Because of their age?
(45) Q. Yes. A. No, because I am under the impression that the son may have been raised or schooled in England and the daughters in Greece.

Q. He, Mr. Callimanopoulos, has lived in the United States since 1945? A. I believe so.

The Court: What are the ages of those children, approximately?

A. I understand that Gregory, the son, is less than thirty years of age, and the daughters are certainly in excess. One daughter is married to the Greek consul who is in Germany now. I believe the other daughter is a resident in New York City, none of whom are citizens of the United States.

[141] Q. Where does the son live? A. He lives in New York City. The son is not employed by Hellenic Lines, Limited.

Q. How about August of 1965, was he employed by them, at that time? A. No, sir.

Q. What employment does he have? A. He operates and owns four or five vessels and has about five other ships under charter.

Q. Running them from New York? A. No, sir. His is a tramping operation and is world-wide.

(46) Q. He lives in New York? A. He lives in the city of New York.

Q. He is not a citizen of this country either? A. He is not a United States citizen.

Q. All right. This Respondents' Exhibit 5, this agency agreement between Universal Cargo Carriers, Inc., and Hellenic Lines, Mr. Hennesey, would you look at that just a minute, please? A. Yes.

Q. This is an agency agreement, is it not? A. Well, I think you would have to define an agency agreement.

[142] Q. Hellenic Lines agrees to act as agent for Universal, do they not? A. Yes, sir.

Q. Hellenic Lines agrees to do everything in the operation of the ship for Universal as agents, do they not? A. Yes.

Q. The compensation payable to Hellenic Lines is a commission, is it not? A. On freights to Greece.

Q. The profits of the operation of the ship goes to Universal, does it not? A. Yes, sir.

Q. It is strictly just an agency agreement, isn't it? (47) A. Yes, sir.

Q. When the employees of the vessel S. S. HERO, in fact, would be employees of Universal? A. No, sir.

Q. Why not, sir? A. Because they sign an agreement in which Hellenic Lines, Limited, is named as their employer.

Q. Aren't you acting as agent for them? A. No, sir, only in respect to freights to Greece.

Q. Then you are acting in derogation of this agreement, are you not? [143] A. No, sir. This pertains to freights to Greece.

Q. It doesn't pertain to operations of the ship? A. With respect to freights to Greece.

Q. Well, do you have any other agreement between the Hellenic Lines and Universal Cargo Carriers concerning the operation of the ship involved in this case, the S. S. HELLENIC HERO? A. No, sir. If I may call your attention to clause three of the agreement, Universal shall pay to Hellenic as consideration for acting as said agents for the said vessels one and one-quarter per cent on that portion of the gross freights or other charges after deducting commissions and/or brokerage payable to third parties under bills of lading, affreightment contracts or other contracts for the carriage of (48) cargo and/or

passengers to and from Greece. Usual/agency fees on cargoes in bulk or moving under charter parties or booking notes as full cargoes or parcels for Greece.

Q. Then. A. So, this agency is an agreement with respect to freights to Greece.

Q. If you would, Mr. Hennesey—Judge, I don't want to be unduly long. I would like for you to read the agency agreement, if you would, beginning at the start.

[144] The Court: You want it read into the record?

Mr. Wood: If it please the Court, it is already in the record if the Court wants to hear it. I don't know what Mr. Diamond has in mind, but go ahead and read it.

A. "This agreement made as of January 1, 1960, by and between Universal Cargo Carriers, Inc., a corporation duly organized and existing under and pursuant to the laws of the Republic of Panama, with its offices at Avenida Central 8-40, Panama, R. P., hereinafter referred to as Universal, and Hellenic Lines, Limited, a corporation organized and existing under and by virtue of the laws of the Kingdom of Greece, with its office at Piraeus, Greece, hereinafter referred to as Hellenic.

Mr. Diamond: Let me interrupt, Mr. Hennesey. The HELLENIC HERO, to your knowledge, has it ever been in operation to Greece?

(49). A. In operation to Greece?

Q. Yes, to your knowledge. A. Well, now, what do you mean by that?

Q. Just what it says. A. The vessel has called regularly at ports in Greece either for the purpose of taking on a crew or [145] discharging or loading cargo.

Q. What trade is the vessel in, at the present time? A. She is in the Indian service.

Q. Where does that trade originate? A. It originates probably in Calcutta and proceeds—

Q. Is she not in the U. S. Gulf trade, at the present time? A. Well, yes. Where the voyage originated—I would say it originated in Calcutta, because we carry more cargo out of Calcutta to Savannah than we carry into—

Q. She is listed on this bulletin, Exhibit 7, U. S. North Atlantic ports, India, Pakistan, is that correct? A. That's right.

Q. And that is the trade she is in? A. Right.

Q. At the time Mr. Rhoditis was injured, what trade was she in? A. I think she was in the same service.

Q. How long has she been engaged in that service? (50) A. I couldn't say offhand without looking at the records.

[146] Q. Has she been engaged in that service ever since she has been employed by Hellenic Lines? A. I would say she was either in that service or the Red Sea service.

Q. Has she been in any service regularly calling at Piraeus? A. Well, I would have to say that all vessels may call at Piraeus when cargo warrants.

The Court: Well, has she actually put into Piraeus fairly recently?

A. I would have to look at the records, Your Honor.

The Court: Well, would you be able to tell from the records you have here?

A. No, sir. I would have to look at her record.

The Court: Well, to your knowledge, when was the last time she was in Piraeus?

A. I would say that she was either in Piraeus or Hericalioan, Crete, within the last three to four weeks.

The Court: All right. Go ahead, Mr. Diamond.

Mr. Diamond: This bulletin you had identified and admitted [147] in evidence shows that the vessel was due to arrive on May 4th. A. Yes, sir.

Q. Then calling on Charleston, New York, Philadelphia, (51) Baltimore, New York, Hampton Roads, Baltimore and New York; is that correct? A. I think you have read the itinerary.

Q. And she is on this regular scheduled run, is that correct? A. That's right.

Q. And Mr. Hennesey, are you one and the same Gerald Hennesey that answered certain interrogatories in this proceeding? A. Yes, sir.

Q. There were interrogatories propounded to Hellenic Lines—no, Universal Cargo Carriers which you answered. The second interrogatory is as follows: State the names and addresses of all stockholders.

(a) State the citizenship of each stockholder.

(b) State the officers of the corporation.

(c) State whether or not any of the stockholders are presently residing in the United States, either on a temporary or permanent basis.

(d) State whether or not any of the stockholders have [148] in the past resided in the United States, either on a temporary or permanent basis.

To answer number two, of the interrogatories which you have answered, the entire answer of number two, your answer, I will ask you if your answer is: "The stock of Universal (52) Cargo Carriers, Inc., is bearer stock, and the identity of the holders of said stock is not reflected in the corporate records of Universal Cargo Carriers, Inc."

Is that your answer? A. Yes, sir.

Q. Then, the Court, upon motion, permitted me to file additional interrogatories to Universal Cargo Carriers, Inc.

Interrogatory Number One is as follows: "State the names of the owners of the stock that are known to you.

(a) State the citizenship and addresses of such owners.

(b) State the amount of stock that is owned by each and the percentage of the stock that is owned as it relates to the stock of the corporation as a whole", and I asked various other questions concerning them and you come in and answer to that question one (a) through (f) and your answer is "The stock of Universal Cargo Carriers, Inc., is owned by Hellenic Lines, Limited, a corporation organized and existing under the shipping corporation laws of the Kingdom of Greece. The head office of Hellenic Lines, Limited, is in Piraeus, Greece, and a branch office is maintained in New York City". Was that your answer? A. Yes.

Q. Where is the New York office located? A. 39 Broadway.

Q. How many employees did you have in that office in (53) August of '65? A. I would say between seventy or seventy-five, thereabouts.

Q. Does the Hellenic or Universal own this building where it is located? A. No, sir.

Q. They lease it? A. Yes, sir.

Q. Under what type of arrangement? A. I believe it is a ten-year lease.

Q. Does the Hellenic Lines or Universal also operate a stevedoring operation in New York City? A. Hellenic does.

Q. How many longshoremen do you regularly employ in New York City? A. You understand the longshoring operation depends upon the cargo to be handled. Today you may have [150] none and tomorrow you may have a hundred and, of course, these men are furnished to us by the I. L. A.

Q. But you do own and operate a stevedoring service there in New York City? A. Well, we perform our own stevedoring services. We do not have a separate subsidiary to handle the stevedoring operation that is. That is done by Hellenic.

Q. Does Hellenic Lines own a pier at Fifty-seventh Street in New York? (54) A. Brooklyn.

Q. Is that where your ships regularly dock in New York? A. Right.

Q. How many employees do you have in the New Orleans office? A. About fifteen.

Q. And the Universal Cargo Carriers, do they have any employees in Greece? A. They have no employees anywhere.

Q. Hellenic Lines has an office in Greece? A. Yes, sir.

Q. They employ less employees in Greece than they do in New York City, don't they? A. Yes, sir, office personnel.

[151] Q. How many ships is Hellenic operating, at the present time? A. Thirty-six.

Q. Now, I think you said fourteen of them are engaged in services outside of the United States? A. Yes, sir.

Q. That would make twenty-two engaged in the United States trade? A. Yes, sir.

Q. Does Universal have an office in Panama? A. Yes, sir.

(55) Q. How many employees do they have there? A. I don't believe they have any.

Q. They have an office but no employees? A. Yes. Offices, yes.

Q. What do they have, a mailing address there? A. Yes, sir.

Q. Does Hellenic or Universal Cargo Carriers or either of the two corporations have any offices at any other

place other than at Piraeus and in the United States? A. As I have already answered, Universal Cargo Carriers [152] does not have an office, to my knowledge, any other place but Panama. Hellenic or its subsidiaries . . .

Q. I did not ask about its subsidiaries. I have asked about Hellenic and Universal Cargo Carriers. A. Hellenic has an office in Piraeus and that's all.

Q. You employ agencies in various ports around the world? A. Either agencies or subsidiaries; yes, sir.

Q. Like any other steamship line? A. Yes, sir.

Q. Mr. Hennesey, do you know of your own knowledge what percentage of freight originates or terminates in the United States with respect to the HELLENIC HERO? A. No, sir.

Q. How about as to Hellenic Lines, Limited? A. I would say that there are more dollars in the United (56) States.

Q. No question about that, is there? A. I don't think so, no.

Q. Does the HELLENIC HERO carry passengers out of the United States? A. Most of the freighters are equipped to carry twelve passengers.

Q. That would apply to the other twenty-two traders? A. Yes, sir, but we don't solicit passenger business.

[153] Q. It is not lucrative? A. No. We don't have the facilities to accommodate the passengers and the trips are too long, but sometimes retired people and school teachers either have the time available and enjoy a trip on an ocean freighter.

The Court: Would it be fair to say that your ships are about like railroads, they have passenger equipment, but hope they don't have passengers? A. Not really, Your Honor, because I am forced to ride the railroads up home. Our passengers have fairly good facilities, and, as a mat-

ter of fact, the accommodations are even better than the ones I am presently enjoying at the Battle House, and if you can tolerate the food, you would enjoy the trip, because a round trip to India costs approximately fifteen hundred dollars and you are gone for about four months. So, that is just slightly in excess of (57) ten dollars a day and you have called at maybe fifteen different countries and visited maybe thirty different seaports.

The Court: You haven't got to sell on the idea. I hope someday to take a sea voyage as a passenger and not as a member of the crew.

A. I hope you take it on the **HELLENIC HERO**.

[154] The Court: Go ahead, Mr. Diamond.

Mr. Diamond: Mr. Hennesey, the hundred and sixty dollars that has been paid to Zacharias Rhoditis since his return to Greece, that is the amount that you have paid him?

A. Yes.

Q. Does this represent the full amount of compensation to which he has been entitled? A. No, sir.

Q. What would it be? A. I understand there would be about six hundred dollars more coming to him.

Q. What do you mean understand? A. The office in Piraeus tells me that about six hundred dollars more would be due him under the law of Greece and we stand ready, willing and able to pay it in Piraeus.

Q. You don't, yourself, understand the Greek Compensation laws, do you? A. In a general way, Mr. Diamond.

(58) Q. Do you read Greek? A. In a general way.

Q. Would you tell me how this—would you tell the Court how this hundred and sixty dollars has been computed and this additional six hundred dollars is computed? A. No, sir. I don't have the details. I simply

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asked the office in Piraeus, "What have you paid Rhoditis," and they said, "Four thousand some-odd drachmaes," and, "How much is he entitled to," and they said, "About six hundred dollars."

Q. How much would he be entitled to under a month's disability? A. In the hospital, about twenty pounds and/or fifty-six dollars, and outside the hospital, about fifty-four dollars.

Q. He wouldn't be entitled to both? A. Well, yes.

Q. I mean, both amounts for the same period of time? A. No. No, he is in the hospital or he is outside the hospital.

Q. All right. Is that the full amount of compensation to which he is entitled? A. No, sir.

Q. What other amounts is he entitled to? A. Then he applies to the Piraeus courts of First Instance and they appoint the three doctors to examine him, and they have a hearing on the thing with witnesses as to the (59) circumstances of the accident, and then they make the determination as to the amount to which he is entitled by Greek law pursuant to his disability, et cetera.

Q. What criteria do they use for awarding amounts? A. That is determined by the law of Greece and I have no knowledge of that.

Q. That is determined by the laws of Greece and he has no knowledge of that and that is all I wanted him to say, and that, I am sure, is the truth.

The Court: All right. Any redirect?

Mr. Diamond: That's all.

Redirect Examination

By Mr. Wood

Q. Just to make it clear, Mr. Hennesey, you were asked about the HELLENIC HERO and the various calls at

the United States ports. What is at the other end of that run? A. Well, the itinerary, of course, would show it better than I can say, because he would call probably first—proceeding first to New York to Alexandria, to Port Said, Suez, Jeddah, Port Sudan, Khorranshahr, Basrah, Bombay, Karachi, from Karachi on to Bombay and around to the east coast of Pakistan and then she would [157] come to Calcutta. She would stay in Calcutta a couple of weeks, depending on the cargo situation, and then to Djibouti for tea and then to (60) Cochin for frozen cargo and to Port Said and to Savannah and so forth.

Q. That would include a thousand degrees? A. Oh, yes.

Mr. Diamond: I object to him leading the witness.

A. Did I say Hericalioan?

The Court: Go ahead.

Mr. Wood: But as a Greek flag vessel or a foreign flag vessel, she is not permitted to sail coast-wise in the United States?

A. Well, the vessel, of course, sails or discharges cargo for coastal carriage. We can't carry cargo from Mobile to New York. We are excluded from that.

Q. One other question. What happens in Greece with regard to a Greek seaman who files a claim in the United States courts, if you know?

Mr. Diamond: I object. He has already testified he knows nothing about United States law. I don't think he is a Greek expert on the law either.

[158] The Court: Overruled. Go ahead.

A. Yes. The collective agreement which the men sign stipulates that they will abide by the jurisdiction of the Greek courts, and if they commence a suit in the United States, for instance, it is reported to the Greek Ministry

of Mercantile Marine and when the man returns to Greece, (61) proceedings are instituted against him for violations of this provision and his license is subject to suspension. This is equivalent to a desertion. If a man deserts in the United States, the harbor master reports to Greece and when he gets back there, his book is lifted.

The Court: Where is he now, if you know?

A. The last I heard, he was in Greece.

The Court: He is not employed by Hellenic?

A. No, sir.

The Court: And has not since this?

A. No, sir.

The Court: All right. Anything else?

[159] Mr. Wood: No, sir.

Mr. Diamond: I have one more question.

The Court: All right. Go ahead.

Mr. Diamond: Mr. Hennesey, on Respondents' Exhibit No. 7 there is eleven ships listed, U. S. Gulf, U. S. Gulf North Atlantic ports, India, Pakistan trade, are there not?

A. Are you talking about these vessels?

Q. These right here. A. Yes.

Q. And that is the HELLENIC HERO in that trade, is it not? A. Yes, sir.

Q. Are there any ports in Greece listed for any of those eleven ships? (62) A. No, for two reasons.

Q. I asked you, Mr. Hennesey, if there were any ports listed?

The Court: Well, the answer is no, is that right?

A. Yes.

[160] The Court: All right.

Mr. Wood: Would you state to the Court why?

A. Yes, because that shows the present position of the vessel and she may already have passed Piraeus on her either incoming or outgoing trip.

Secondly, if there was no cargo for Piraeus, the vessel does not call at Piraeus. She calls at Hericalioan, Crete.

Mr. Wood: I have nothing else.

Mr. Diamond: Along that line, the E. T. S. on here, estimated time of sailing, New York, you say there is two reasons, one was because it may have already passed there?

A. Right.

Q. And the other is no cargo. A. Right.

Q. This shows a number of ports for HELLENIC SPIRIT, all of them foreign ports. A. HELLENIC SPIRIT?

Q. Yes. A. She is down south right now.

[161] (63) Q. This shows a number of foreign ports for HELLENIC CHARM? A. Right.

Q. There is none listed there? A. No.

Q. And this shows some ports for HELLENIC DESTINY and there is none listed there. A. No, because you are only bringing DESTINY from Cochin to Port Said.

Q. This shows the SPLENDOR here. A. She is already passed Piraeus.

Q. And the other one? A. That terminates in New York. We don't know, we might get a thousand tons of cargo for Piraeus.

Q. HELLENIC LAUREL shows no ports in Greece and it lists about fifteen ports. A. No, because that brings her up to Port Said.

Q. The same thing for HERO; LEADER and DOLPHIN, is that correct? A. The HELLENIC HERO you

brought up into New York. You don't have your itinerary on that ship for outbound.

Q. This is the schedule for it on April 28, 1967? A. Yes, but Mr. Diamond, you bring the ship up to New York, she has probably eight thousand ton of cargo, where is it going?

[162] (64) The Court: Anything else, gentlemen?

Mr. Diamond: I have nothing else.

Mr. Wood: Nothing else, Judge.

The Court: All right. Court will stand adjourned.

(Certificate omitted.)

[163] IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
ALABAMA, SOUTHERN DIVISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and title omitted) (Filed: Oct. 4, 1967)

This action is brought by an alien seaman to recover for personal injuries sustained aboard the SS HELLENIC HERO on August 3, 1965, in the Port of New Orleans, Louisiana.

Findings of Fact

1. Zacharias Rhoditis was a citizen of Greece serving aboard the SS HELLENIC HERO in the capacity of an A/B seaman on August 3, 1965, when he was injured.
2. The SS HELLENIC HERO is owned by Universal Cargo Carriers, Inc., a Panamanian corporation, flies the flag of Greece, and is managed by Hellenic Lines, Ltd., a Green corporation.
3. Pericles G. Callimanopulos, a citizen of Greece, owns in excess of ninety five (95) per cent of the stock of both corporations.

4. Pericles G. Callimanopulos has resided in this country in excess of twenty (20) years.

5. The principal offices of the Respondents are located at 39 Broadway, New York, New York.

6. The SS HELLENIC HERO, at the time of this accident and continuing until the time of trial, was engaged in a regularly scheduled run between various Gulf ports [164] of the United States and ports in the Middle East. One hundred (100) per cent of this vessel's income was from cargo either originating or terminating in United States ports.

7. The business operation of Respondents is clearly managed and operated from the United States.

8. The Libelant, an illiterate Greek seaman, was injured in the Port of New Orleans, Louisiana, when the SS HELLENIC HERO was being tied up to a dock in said Port.

9. The Libelant was injured as the proximate result of the negligence of the employees of the Respondents and the unseaworthiness of the equipment of the SS HELLENIC HERO. The Respondents offered no evidence in opposition to the claim on its merits.

CONCLUSIONS OF LAW

Following the law announced in *Lauritzen v. Larsen*, 345 U. S. 571, it would seem to us that the contacts in this case with this country are quite substantial. The Libelant was injured in the Port of New Orleans, Louisiana, aboard a vessel regularly engaged in a scheduled trade to and from the United States Gulf ports; the vessel and its controlling corporations are owned by a resident of the United States, having enjoyed his residence in this country in excess of twenty (20) years, and the operation [165] was clearly managed, controlled and operated from

this country. Under these facts, I hold that this Court has jurisdiction and that the Jones Act is applicable. **Bartholomew v. Universe Tankships, Inc.**, 263 F. 2d 437; **Pavlou v. Ocean Traders Marine Corp.**, 211 F. Supp. 320; **Southern Cross Steamship Co. v. Firipis**, 285 F. 2d 651.

Turning to the question of damages, I find that the Libelant was disabled from performing his usual work of a seaman until March 10, 1966; I further find that his fractured leg had healed on March 10, 1966, without any permanent disability, although, on said date, the Libelant was still suffering with some pain and discomfort as a result of his injuries. Libelant's damages for loss of wages amount to One Thousand (\$1,000.00) Dollars, and his damages for pain and suffering amount to the sum of Five Thousand (\$5,000.00) Dollars. A decree in accordance with the foregoing will be entered.

Dated this 4th day of October, 1967.

s/ Daniel H. Thomas

United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ORDER AWARDING LIBELANT JUDGMENT

Minute Entry

Daniel H. Thomas

October 4, 1967

(Number and title)

This cause having been taken under submission on the merits on May 8, 1967, and the Court having on this [166] the 4th day of October 1967 filed its findings of fact and conclusions of law herein holding that libelant is entitled to damages for loss of wages and for pain and suffering in the total amount of \$6,000.00, it is now

Ordered, Adjudged and Decreed that libelant have and recover of the respondents the sum of Six Thousand Dollars (\$6,000.00) plus interest thereon at the rate of 6% per annum from August 3, 1965, until paid, with costs taxes against the respondents.

Dated at Mobile, Alabama, this the 4th day of October 1967.

Daniel H. Thomas
Chief Judge

In the United States Court of Appeals
For the Fifth Circuit

(Number and Title Omitted)

(May 8, 1969)

Before Goldberg and Ainsworth, Circuit Judges,
and Spears, District Judge.

Goldberg, Circuit Judge: Sixteen years after *Lauritzen v. Larsen*¹ we must fish in somewhat turgid waters for its spawn in order to determine the applicability of the Jones Act.² The question presented is whether or not the Jones Act applies so as to allow recovery to a Greek seaman who

¹ 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953).

² 46 U. S. C. A., § 688 (1958), the Jones Act, provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the commonlaw right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. . . ."

was injured in a United States port on a Greek-flag vessel owned and controlled by United States domiciliaries. We hold that the Jones Act applies and affirm the judgment of the district court.³

Zacharias Rhoditis, an illiterate Greek seaman, was injured aboard the S. S. HELLENIC HERO while the ship was docking at the Port of New Orleans. Seeking compensation for his injury, Zacharias brought suit under the Jones Act against the appellants, Universal Cargo Carriers, Inc., and Hellenic Lines, Ltd.⁴

The HELLENIC HERO, which flies the Greek ensign and is registered in the port of Piraeus, Greece, has multi-national ties, but its ownership is essentially American. Technically, the ship is owned by a Panamanian corporation which in turn is owned by a Greek corporation. However, ninety-five per cent of the stock of the Greek corporation is owned by two residents of the United States, and the corporation has its principal office in New York. Universal Cargo Carriers, the Panamanian corporation, is solely a holding company with no operational responsibilities in connection with the HERO. The real ownership and operational responsibilities are vested in Hellenic Lines, a corporation organized and existing under the laws of Greece. Hellenic is managed from a base in New York,⁵

³ The district court's opinion is reported at 273 F. Supp. 248.

⁴ This suit originated as a libel under the general admiralty laws of the United States, *in rem* against the HELLENIC HERO and *in personam* against Universal Cargo Carriers and Hellenic Lines. After discovering that the appellants had substantial United States ties, Zacharias successfully moved to have the Jones Act applied. The suit under the Jones Act "is in personam against the ship's owner and not one in rem against the ship itself." *Lauritzen v. Larsen*, *supra*, 345 U. S. at 574, 97 L. Ed. at 1263.

⁵ The record reflects that the New York office of Hellenic Lines has seventy-five employees. Another corporate office, which is located in New Orleans, employs fifteen.

and is owned almost entirely by Pericles Callimanopoulos and his son.

Pericles, although a Greek citizen, has resided in the United States since 1945. With a home in Greenwich, Connecticut, and an office in New York City, Pericles performed his duties as managing director of the corporation from the United States. Under Pericles' direction, the HERO engaged in regularly scheduled runs between various gulf ports of the United States and port in the Middle East. The entire income of the HERO was from cargo either originating or terminating in United States ports.

Zacharias signed on the HERO in Heraclion, Greece. His contract of employment provides that Greek law and the Greek Collective Bargaining Agreement shall apply as between the employer and the crew, and that all claims arising out of the contract of employment shall be adjudicated exclusively by the Greek courts.

In the court below Universal and Hellenic directed their defense so that it was primarily a challenge to the court's jurisdiction over the subject matter. The district court held that it had jurisdiction and explained its result as follows:

"Following the law announced in *Lauritzen v. Larsen*, 345 U. S. 571, it would seem to us that the contacts in this case with this country are quite substantial. The Libelant was injured in the Port of New Orleans, Louisiana, aboard a vessel regularly engaged in a scheduled trade to and from the United States Gulf ports; the vessel and its controlling corporations are owned by a resident of the United States, having enjoyed his residence in this country in excess of twenty (20) years, and the operation was clearly managed, controlled and operated from this country. Under these facts, I hold that this Court has jurisdiction and that the Jones Act is applicable [cases cited]." 273 F. Supp. at 249-50.

The court then found that Zacharias' injury was the proximate result of the appellants' negligence and awarded damages in the amount of \$6,000.

The sole issue raised by this appeal is whether the facts at bar warrant the application of the Jones Act, which is the basis of the district court's assertion of jurisdiction. Both parties rely on the primogenial case of *Lauritzen v. Larsen*, 1953, 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254, for what it says and for what it does not say. In *Lauritzen* the question was whether one Larsen, a Danish seaman negligently injured on board a ship of the Danish flag in Havana harbor, had a cause of action under the Jones Act. Larsen, while temporarily in New York, had joined the crew of this ship owned by a Danish citizen. He had signed ship's articles providing that the rights of crew members would be governed by Danish law and by the employer's contract with the Danish Seamen's Union. In holding that the Jones Act did not apply, the Supreme Court listed seven factors to be considered in answering the question of applicability: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured seaman; (4) allegiance of the defendant shipowner; (5) the place where the contract of employment was made; (6) the inaccessibility of a foreign forum; and (1) the law of the forum.

If we were to weigh the seven immortal pillars of *Lauritzen* by merely counting contacts, the score would be three for Jones Act coverage, four against.⁶ The immortal

⁶ The factors here pointing to Jones Act applicability are: (1) the seaman was injured in a United States port; (2) the defendant shipowner is a United States domiciliary and operates his shipping business from this country; and (3) the forum is a United States court. The contacts pointing the other way are: (1) the ship's flag is Greek; (2) the injured seaman is Greek; (3) the seaman's contract of employment was made in Greece; and (4) there is a foreign forum available to the injured seaman.

Zacharias, however, contends that the count should be the other way: four to three in favor of coverage. He argues that there is

seven, however, are not to be so mechanistically applied. *Lauritzen* did not create a contact counting test.

Rather the Supreme Court intended the applicability question to be answered by "ascertaining and valuing

no foreign forum accessible to him because a Greek court could not exercise jurisdiction of his suit, notwithstanding the appellants' willingness to submit to Greek jurisdiction. In support of this contention the appellee cites *Bikos v. Miralago Compania Armadora, S. A.*, a 1962 case, in which the Athens Court of Appeals refused to exercise jurisdiction in a case similar to the one *sub judice*. According to the appellee's brief, the *Bikos* case involved a tort claim by a Greek citizen against a Panamanian corporation which owned the Greek flag vessel on which the Greek plaintiff was injured. In holding that it was without jurisdiction over the controversy, the Athens court said:

"Foreigners come indeed under the jurisdiction of this country's courts, according to Article 126 of the Introductory Law to the Civil Code; they can sue or be sued in accordance with provisions in effect relating to jurisdiction, if such jurisdiction is among the general and specific jurisdictions mentioned in the Civil Procedure. But such jurisdiction of the Piraeus Court of First Instance or other domestic court or judge does not apply to the appellee foreign corporation, since * * * appellant's services to it, during the rendering of which he was injured, were rendered abroad."

In the court below the appellee did not introduce the *Bikos* opinion into evidence and made no effort to prove that it represented the law of Greece. Since it was not proved as a fact, we cannot take judicial notice of its holding. *Rowan v. Commissioner*, 5 Cir. 1941, 120 F. 2d 515, 516; *In re Mylonas*, N. D. Ala. 1960, 187 F. Supp. 716, 721; 5 *Moore's Federal Practice*, § 43.09 (1968); 9 *Wigmore on Evidence*, § 2573 (1940). In *Black Diamond S. S. Corp. v. Stewart & Sons*, 1949, 336 U. S. 386, 397-98, 69 S. Ct. 622, 93 L. Ed. 754, 764, the Supreme Court instructs us:

"Since Belgian law may be enforceable by our courts, that law, having been pleaded, must be established. It is true that this Court has on several occasions held international rules which had passed into the 'general maritime law' to be subject to judicial notice [cases cited]. But where less widely recognized rules of foreign maritime law have been involved, the Court has adhered to the general principle that foreign law is to be proved as a fact [cases cited]."

Moreover, there is uncontradicted testimony in the record to the effect that Zacharias could obtain relief through the Greek courts if he sought it. Upon this record, therefore, we cannot say that the appellee lacks access to a foreign forum.

points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." 345 U. S. at 582, 97 L. Ed. at 1267. "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. . . . [T]he test is that 'substantial' contacts are necessary. And while . . . one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more than to say that in such a case the contact is so obviously substantial as to render unnecessary a further probing into the facts" *Bartholomew v. Universe Tankships, Inc.*, 2 Cir. 1959, 263 F. 2d 437, 439, cert. denied, 359 U. S. 1000, 79 S. Ct. 1138, 3 L. Ed. 2d 1030. Likewise, the seven talismen are neither exclusive nor immutable.⁷

The Supreme Court clearly indicated that the immortal seven were not to be given equal weight and that their

⁷ In *Pavlou v. Ocean Traders Marine Corp.*, S. D. N. Y. 1962, 211 F. Supp. 320, 325, the court found an eighth contact worthy of consideration—the shipowner's base of operations:

"This court recognizes that the factor of base of operations was not emphasized by the Supreme Court in *Lauritzen v. Larsen*, 348 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953). However, the court does not interpret that decision as an attempt by the Supreme Court to exhaust the factors which may be relevant. It is clear that there the court was only dealing with the circumstances which were present therein. Indeed, in the *Bartholomew* case, supra, at page 443 of 263 F. 2d, the Court of Appeals of this Circuit interpreted the *Lauritzen* decision in this way. Further, persuasive authority exists to support the view that the base of operations of the persons directing the operations of the vessel is a factor making the Jones Act applicable."

We agree with *Pavlou* that courts should consider the location of the shipowner's base of operation in conjunction with the seven factors articulated in *Lauritzen*. Since New York was the principal office of Hellenic Lines, this factor points persuasively toward Jones Act applicability.

significance might vary from case to case. The Supreme Court ascribed little significance to the place of contract, to the inaccessibility of a foreign forum, and to the law of the forum. We shall do likewise. Moreover, in this case we find the domicile of the injured seaman to be unimportant. The factor said to be of "cardinal importance" is the law of the flag. "[T]he weight given to the ensign overbears most other connecting events in determining applicable law," and "it must prevail *unless some heavy counterweight appears*" [emphasis added]. 345 U. S. at 584-86, 97 L. Ed. at 1269. In this case we find that heavy counterweight: the HELLENIC HERO was for all commercial purposes owned and operated by a United States domiciliary.⁸

The HERO's flag is more symbolic than real as is evidenced by the fact that its operation and ownership ties are American, not Greek. Under these circumstances it is fair to say that the HERO's flag is not due the same weight which *Lauritzen* gave to a more sturdy flag. Courts need not elevate symbols over reality. We therefore pierce the corporate veil and conclude that the HERO's flag is merely one of convenience.

Lauritzen itself recognized that courts are not bound by flags of convenience:

"It is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on

⁸ Since he has resided in the United States and maintains both his home and principal place of business here, Pericles is properly categorized as a domiciliary of this country. See *Mitchell v. United States*, 1875, 88 U. S. (21 Wall.), 310, 22 L. Ed. 584, 586. See also 28 C. J. S., § 11(f) ("A change of domicile to another country does not involve or require a change of nationality or an intent to case off all allegiance to the country of the former domicile.")

occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them." 345 U. S. at 587, 97 L. Ed. at 1270.

Our course through the corporate veil also has strong support in post *Lauritzen* cases:

"Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established [cases cited]. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See *Lauritzen*, 345 U. S. at page 587, 73 S. Ct. at page 930. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act [cases cited]." *Bartholomew v. Universe Tankships*, *supra*, 263 F. 2d at 442.

See also *Southern Cross Steamship Co. v. Firipis*, 4 Cir. 1960, 285 F. 2d 651, *cert. denied*, 365 U. S. 869, 81 S. Ct. 903, 5 L. Ed. 859; *Pavlou v. Ocean Traders Marine Corp.*, S. D. N. Y. 1962, 211 F. Supp. 320; *Voyiatzis v. National Shipping & Trading Corp.*, S. D. N. Y. 1961, 199 F. Supp.

920; *Zielinski v. Empresa Hondurena de Vapores*, S. D. N. Y. 1953, 113 F. Supp. 93.

Most of the flag of convenience cases have involved ships whose owners were American citizens, not aliens domiciled in the United States as here. This distinction should make no difference because aliens residing in this country are, with rare exception, subject to the same commercial and tort laws as United States citizens. In *Leonhard v. Eley*, 10 Cir. 1945, 151 F. 2d 409, 410, wherein a resident alien was held to be subject to our Selective Service laws, we read of the obligations owed by aliens residing on our shores:

“Aliens residing in the United States, so long as they are permitted by the government to remain therein, are entitled generally, with respect to the rights of person and property and to their civil and criminal responsibility, to the safeguards of the Constitution and to the protection of our laws. However, they may exercise only such political rights as are conferred upon them by law. Their duties and obligations, so long as they reside in the United States, do not differ materially from those of native-born or naturalized citizens. Equally with such citizens, for the rights and privileges they enjoy, they owe allegiance to our country, obedience to our laws, except those immediately relating to citizenship, contribution to the support of our governments, state and national; and in war, they share equally with our citizens the calamities which befall our country; and their services may be required for its defense and their lives may be periled for maintaining its rights and vindicating its honor.”

The financial responsibility for compensating injured seamen is much less onerous than the personal sacrifice an alien makes when he serves in our military. This being true, it follows that a corporation owned by resident

aliens should be subject to the Jones Act just as much as a corporation owned by United States citizens. Hellenic Lines and Universal Cargo Carriers are commercially domiciled in this country and therefore owe fealty to our laws.

The American character of this tort is further emphasized by the fact that Zacharias' injury occurred in the Port of New Orleans. This alone would not be sufficient to invoke the Jones Act. *Romero v. International Terminal Operating Co.*, 1959, 358 U. S. 354, 381-84, 79 S. Ct. 468, 3 L. Ed. 2d 368, 387-89. It is, however, a countervailing factor which weakens our bondage to the flag. When combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability. In *Southern Cross Steamship Co. v. Firipis*, *supra*, 285 F. 2d at 655, we read:

"[T]he effective control of the vessel was by American interests. This, coupled with the fact that the injury occurred while the ship was in drydock in an American port and with the ship's Hondurian registration being illusory, is sufficient under the doctrine of *Lauritzen v. Larsen*, *supra*, for the application of the Jones Act."

We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles and the plaintiff was a Greek seaman injured in a United States port). *Tsakonites v. Transpacific Carriers Corp.*, 2 Cir. 1966, 368 F. 2d 426, *cert. denied*, 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434. The appellee attempts to distinguish *Tsakonites* on the tenuous ground that at the time of *Tsakonites*' accident Pericles had not met the residence requirements for United States citizenship, whereas in our case Pericles had fulfilled that eligibility requirement at the

time of Zacharias' injury. Casting such finite distinctions aside, we find that we cannot accept the reasoning and conclusion of the *Tsakonites*' majority. Instead we find our haven in the persuasive logic of Judge Waterman's dissent from which we shall quote *in extenso*:

"United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U. S. C., § 688 application, when American-based shipowners who are United States citizens have sought the protection from seamen's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here. [cases cited.] I would hold that here, in this case, where the injury occurred at dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him. I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See *Kwong Hai Chew v. Colding*, 344 U. S. 590, 596, 73 S. Ct. 472, 97 L. Ed. 576 (1953). Moreover, the duties and obligations of a resident alien have not been thought to 'differ materially from those of native-born or naturalized citizens.' *Leonhard v. Eley*, 151 F. 2d 409, 410 (10 Cir. 1945). To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution

requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see, e. g., *Leonhard v. Eley*, supra, suggests that any United States law, such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

"So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

"I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vessels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territorial waters, a permanently resident alien should also be so liable." 368 F. 2d at 429-30.

We hold that the district court correctly found that it had jurisdiction to apply the Jones Act. The power of the flag is not limitless, and its cloth should not be stretched beyond realistic and reasonable lengths. Maritime allegiance is not to be defined in a patriotic, nationalistic, or chauvinistic sense, but in terms of economic ties. The HERO and its owners were not strangers wandering to our shores. Not only did most of the HERO's nautical peregrinations call for United States docking, but its ownership also rested here. The alienage of Pericles and his corporate entourage is clearly much less factual than fictional. We respect the inviolability of Pericles' choice of sovereignty, but not his choice of law.

Affirmed.

United States Court of Appeals
For the Fifth Circuit

(Number and Title omitted)

Before Goldberg and Ainsworth, Circuit Judges, and
Spears, District Judge.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that appellants pay to appellee, the costs on appeal to be taxed by the Clerk of this Court.

May 8, 1969

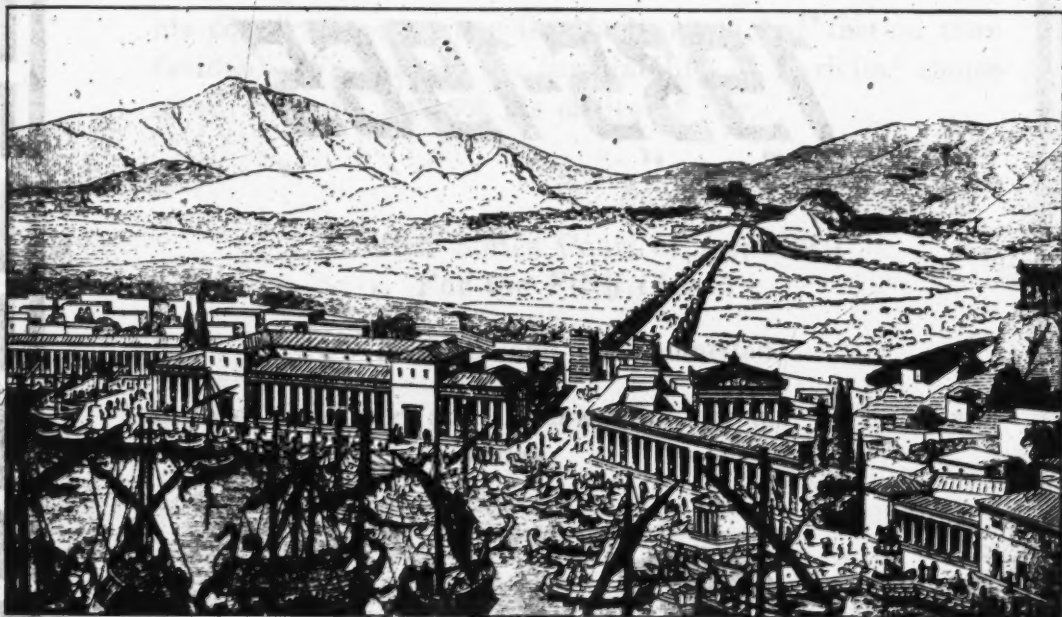
Issued as Mandate: July 11, 1969.

PETITIONERS' EXHIBIT NO. 2

1935-1965



HELLENIC LINES LIMITED



The Port of Piraeus in ancient times



Thirty

Years

Service

1935-1965



The Parthenon — Athens

Greece

Since ancient times the Greek people have been using the sea as a source of food, as a highway of transportation between the islands and the mainland, and as a means of livelihood for many of her menfolk.

The land of one of man's oldest civilizations, steeped in centuries of history, recognised as the birthplace of the principle of the rights of the individual within the community, dotted profusely with ancient edifices and possessing in trust for all her people, priceless relics of art and culture. Each generation is reminded constantly of the glory of her past and inspired to strive in spite of wars, earthquakes and other disasters to be worthy of such an heritage.

It is therefore logical to find in the tradition of the sea and the spirit of private resourcefulness, the emergence of men, who by their foresight, energy, thrift and instinctive knowledge of human nature, have built up enterprizes in worldwide international transport.

Small wonder that Greek lads, nurtured in such an environment, are fired with the ambition to prosper by their own enterprise, to be deserving of the pride of their families, honoured by their birthplace and esteemed by their fellow countrymen.

No one is far from the sea in Greece, a country which for its area has an inordinate length of coastline. Situated in the Mediterranean Greece is favoured by a mild climate and therefore it is not surprising that her people have naturally taken to the sea for commerce and pleasure.

This is such a story



Mr. P. G. CALLIMANOPOULOS

Founder and General Manager

Patras

... is a seaport on the western shores of the Peloponnese overlooking the entrance to the Gulf of Corinth, with the mountains of Etolicon to the north dropping steeply from unclouded skies to the clear shimmering sea, and to the west, in the distance across the sea, the beautiful island of Cefalohia. Looking south westwards lies Olympia, while in the opposite direction, over the mountains, lies Delphi, the scene of the mystic oracles.

There, in 1892, Pericles G. Callimanopoulos was born and spent his boyish years.

Reaching manhood his eyes were already focussed on ships and the ambition to be a shipowner one day was doubtless in his mind.

He started his career as an assistant to Mr. Coulis who was the Agent for regular cargo services and, before long, began to merit the notice of his elders. Born into a family of modest financial means, our subject had to start from sealevel if he was to realize his ambition to be a shipowner. He succeeded, early in the first war, in becoming part owner of a small ship, called the "VALKIRIA", while he was still serving in the Royal Hellenic Army. From the sale of this ship our young man found himself with a little capital, which he put to

Patras



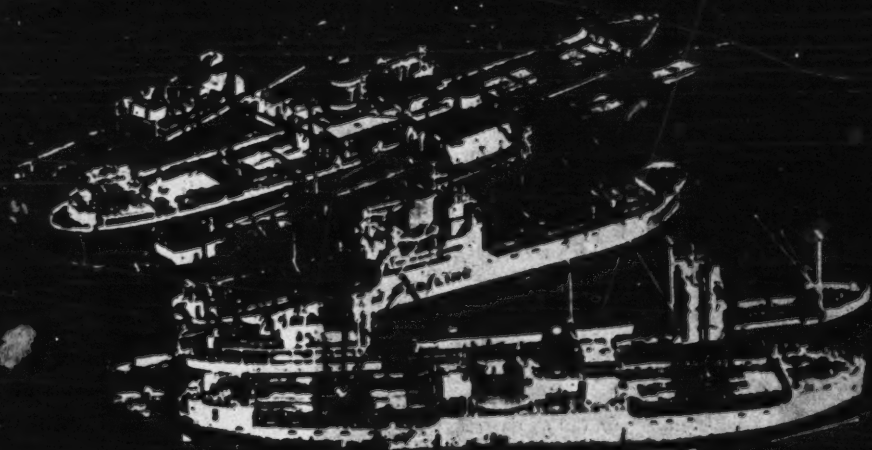
work against the time when he could buy his next ship. Meantime, he was running a coal depot in Piraeus and other trading activities associated with shipping, which included a period spent in England, then the undisputed centre of worldwide mercantile affairs.

Between the Wars, Greek shipowners were almost entirely involved with tramping, that is, hiring their ships to go anywhere and everywhere that remunerative freight earnings could be made. It was an entirely new concept for a Greek owner to use his ships for regular Services to and from specific ports or countries, which is termed 'liner' trading.

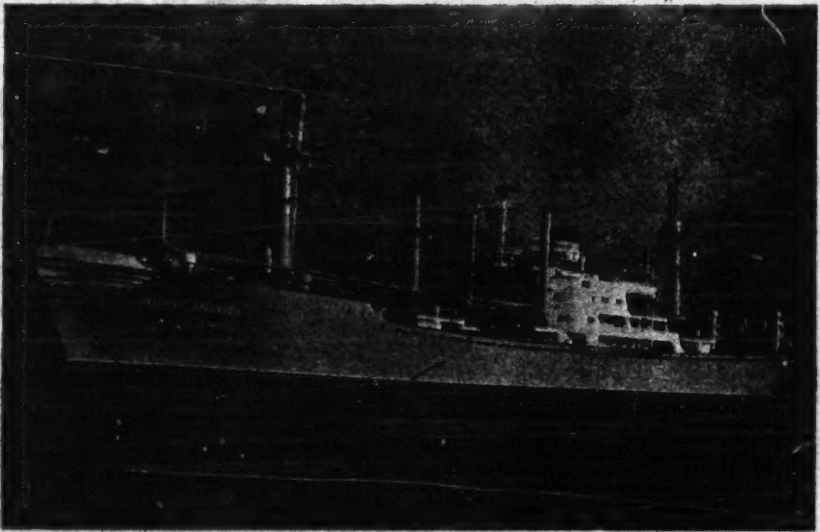
Mr. Callinifanopoulos determined that his future would be to establish a worldwide operation of regular liner Services under the Greek flag, manned by Greek seamen in ships of the highest standard of efficiency, maintenance and equipment. While requiring the maximum devotion to duty from officers and seamen, he proved a good employer, and was not unappreciative of loyalty. By his energy, knowledge and self sacrifice, he inspired admiration and devotion amongst those who carried out their duties earnestly.

He saw his dream of worldwide liner Services as being not only in his personal interest but also a means of enhancing the reputation of his country abroad. A wellfound ship, with a diligent crew is no finer symbol, at a foreign port, of a country's tradition and development.

With growing impatience but still continuing quietly to increase his knowledge and business acumen, he waited his chance. It came in 1935.



THE PORT OF PIRAEUS



m.s. Hellenic Splendor



THE PORT OF PIRAEUS

1935

.... was the year, and March the 19th the date, on which the name of HELLENIC LINES LIMITED was registered in Greece as a corporate Company. The Company owned only one ship, the steamer "HELLAS", appropriately named as, in English, the translation is "GREECE." Undeterred, and augmented by chartered tonnage, a regular liner Service was started between the Aegean countries and the United Kingdom and the northern European Continent.

By perseverance and careful regard to the requirements of importers and exporters, a footing was established in this trade. As opportunity presented itself, the Company purchased further ships until in 1938 the fleet comprised eight units.

These few years prior to the outbreak of war were times of anxiety. Shipowners of other nations were viewing with some apprehension the rise of this Greek liner operator and were beginning to take steps to deprive the ships of cargo so that their withdrawal would be economically obligatory.

Convinced of the right to fly the Greek flag in trades, not only with Greece but between all countries, the Company persisted, in spite of foreign understandings designed to debar Greek tonnage. Constant heed was given to the principle that 'ships must be provided to suit the cargo and not that cargo must be limited by the ship'.

The Acropolis—Athens



International trade must not be hindered by insufficient and unsuitable cargo space.

Liner services provide the 'bridge' between manufacturers and consumers overseas. The 'bridge' must initially have sufficient width to take the maximum foreseeable traffic and it should be the foresight and spirit of shipowners, unrestricted by governments or national prejudice, to provide the transport facilities in advance of the demand. Sea transport commercially is international, and traditionally has been open to ship-owners regardless of nationality or flag.

Confident that these concepts are ultimately in the best interest of all countries, and therefore to mankind, the Company continued to serve cargo interests both at home and abroad, either in collaboration with foreign Lines or independently.

On the outbreak of war in 1939 national shipping assets were conscripted and the eight ships of the fleet were willingly put at the disposal of the homeland.

Before the shadow of invasion finally fell across Greece, Mr. Callimanopoulos promised publicly that, in due time, the Company would be revived to send its ships once again to sail the seas with pride and efficiency.

All but one ship was lost by enemy action. It is interesting to note that, by a strange coincidence, the surviving vessel was the "HELLAS" which, as already stated, was the first one to be acquired by the Company.

S.S. Patrai

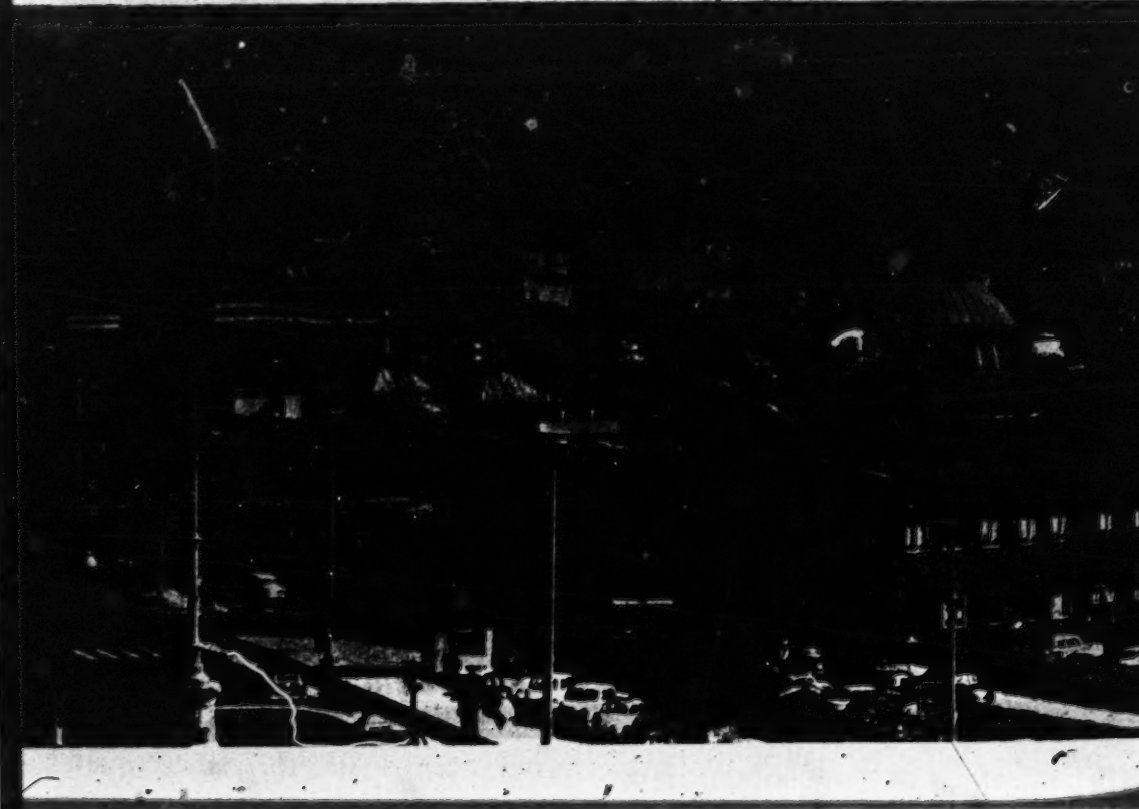




THE PORT OF ANTWERP

West India Dock, Port of London

Port of Hamburg



True

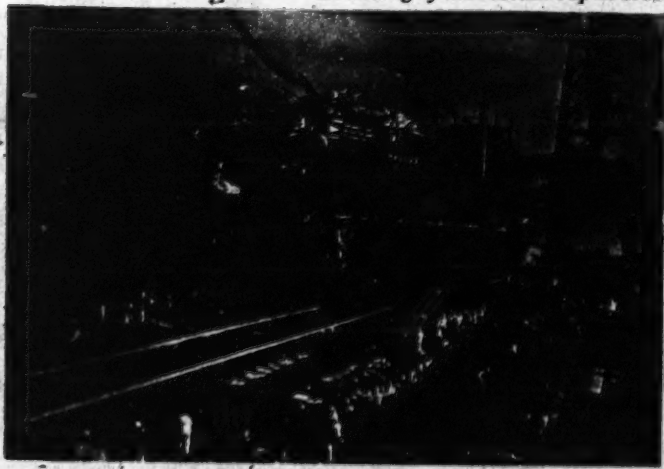
..... to prediction and within a short time after the end of the War, the Company was reborn. The sole surviving ship was promptly despatched to reinaugurate the United Kingdom/Continent —Mediterranean Service.

At the same time, Mr. Callimanopoulos went to the United States of America to secure ships in order to commence Services to and from the Atlantic Coast of that great country. He succeeded in securing five ships from those sold by the U.S. Government and the Hellenic Lines Service from the U.S. Atlantic Coast to the Mediterranean became a reality. Incidentally, this was the only regular liner Service at that time between Greece and the U.S.A.

With due foresight and confidence, the Company placed orders for four sister motor ships each of 6000 tons D/W with a speed of sixteen knots. Named "HELLAS", "ATHINAI", "HOLLANDIA" and "TURKIA", of modern design and capacity, these ships were put into operation to relieve the "Liberty" types, which became the forerunners of Hellenic Lines Services from the United States to the East via the Suez Canal.

Careful management, without however, lowering the high standard of ship maintenance, enabled the Company to prosper and within the next ten years, it was able to place orders with German, Japanese and Scottish shipbuilders for new ships of the latest design, offering heavy lift and reefer space facilities to meet growing cargo requirements.

Launching of m.s. Hellas Japan 1935



By 1957, the Company had taken delivery of twenty ships. On another page, readers will note the continued fleet expansion up to last year when a total of twenty nine ships were owned by the Company.

This year it is expected that a further ship will be added to the fleet, to be employed in the United Kingdom/Continent—Middle East trades. In recognition of the long association between the United Kingdom and Hellenic Lines, the Company propose to salute their friends there by naming the latest ship, the s/s "LONDINON". The Company has recently purchased a further four large speedy vessels which are scheduled to be delivered shortly.

"Thirty ships in thirty years" shows steady calculated progress towards the ambition of Mr. Callimanopoulos that his country's flag will be found in all major Liner trades; represented by ships appropriate to the cargo handled, properly scheduled and operated and manned by officers and men devoted to their calling and, by their efficiency and conduct a credit to their ancient traditions and country.

All Hellenic Lines' ships are registered in Greece, contributing the measure of their success to that country. Only Greek nationals are signed on board and the standard of remuneration and degree of wellbeing extended to all crews is high.

R. J. ANDERSON

s.s. Belgion

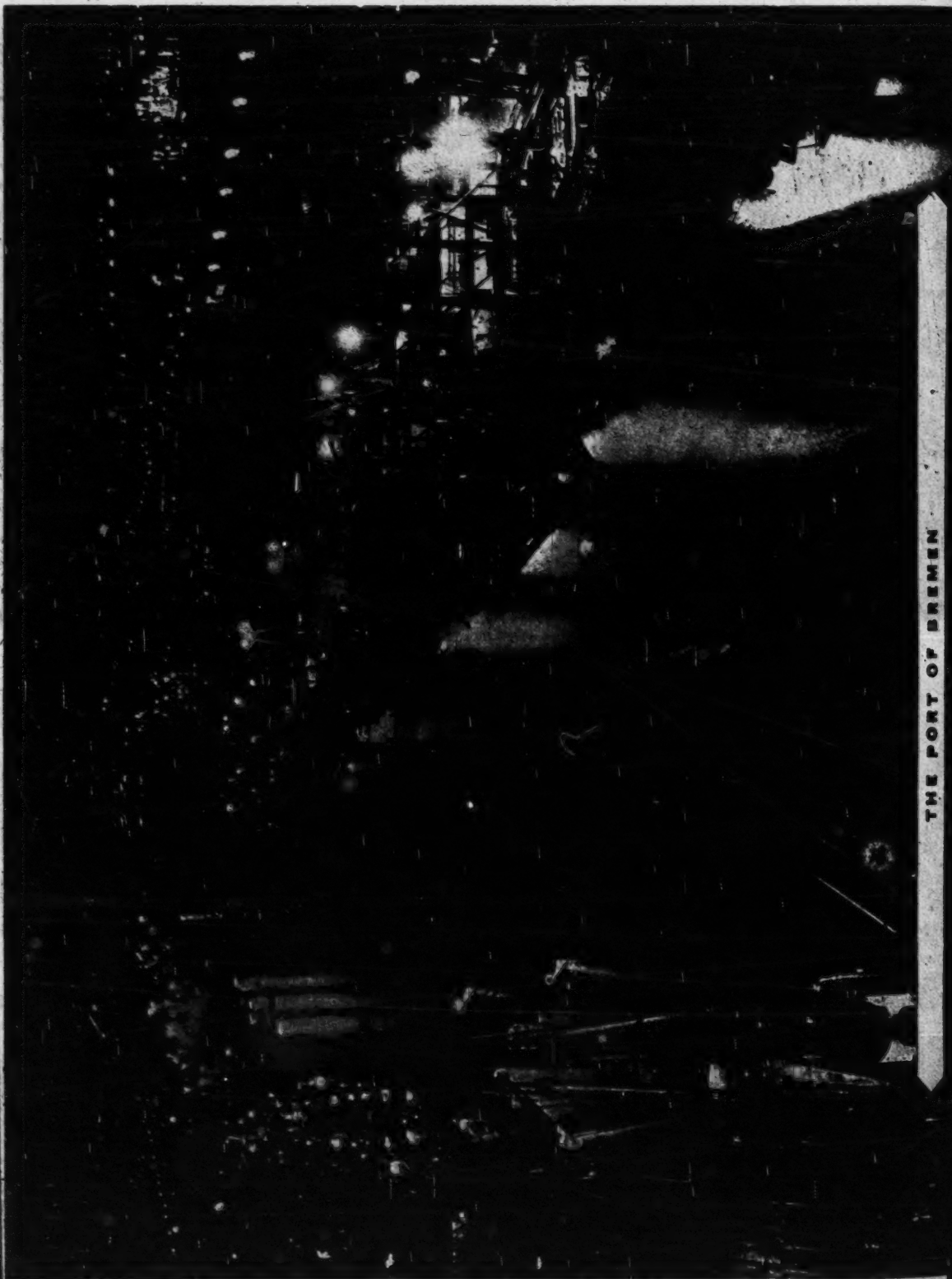




Port of Rotterdam By courtesy of Foto KLM Aerocarto N. J.

Port of New York





THE PORT OF BREMEN

Offices

The Head Office of Hellenic Lines Ltd. is at Piraeus, the principle port of Greece, where an experienced staff assist the resident Directors to manage operations throughout the world.











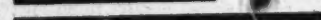









From an office in New York, Mr. Callimanopoulos, as sole owner, is able to keep a watchful eye on all the Company's affairs. The Company also maintains offices at New Orleans, London (The Fenton Steamship Co. Ltd.), Hamburg, Istanbul and Izmir.

From all these offices and, from the Company's Agents throughout the world, one can expect courtesy and knowledgeable understanding of trading problems. There will be found the readiness and the wish to serve the importers and exporters of the world for mutual benefit and the ultimate wellbeing of all peoples.

At this time, Hellenic Lines look back on the past thirty years, and recognise with gratitude the support received from their many friends throughout the world.

All members of the organization, both on shore and afloat are inspired by the achievements of the Company to press forward with plans to continue, and perhaps extend, the Services at maximum efficiency and with due consideration to the future requirements of all users of freight transportation by sea.

FLEET EXPANSION.

YEAR		VESSELS	D/W
1935		4	16.661
1936		6	23.258
1937		7	28.454
1938/40		8	33.064
1941/44	 Seven vessels sunk by enemy actions.	1	4.005
1945/46		6	56.225
1947		8	62.855
1948/52		9	68.215
1953		12	84.435
1954		11	80.430
1955		17	118.390
1956		20	142.570
1957		22	148.950
1958		23	159.524
1959		24	170.115
1960		27	192.711
1961		28	205.344
1962		29	216.085
1963		29	216.085
1964		29	216.085

The progress of Hellenic Lines fleet can not only be measured by the total number of vessels, but by the way in which each addition has been purchased to fit the individual needs of each trade. For example in 1947 only 28,000 cubic feet of space was available for refrigerated cargo and today this total now stands at just under 650,000 cubic feet; a similar comparison can also be made with space available for bulk liquids.

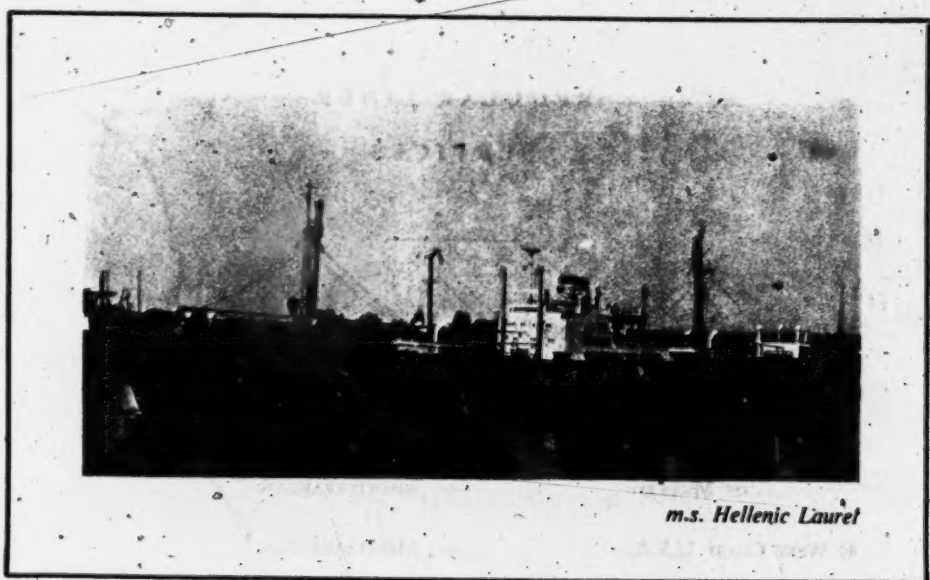
Hellenic Lines have not catered for cargo only; each new vessel on the trans-Atlantic Services can accommodate a limited number of passengers.



m.s. "HELLENIC LAUREL" at THE PORT OF HOUSTON, TEXAS, U.S.A.

FLEET DETAILS AS AT OCTOBER 1965

NAME	G.R.T.	N.R.T.	D/W	BALE CUBIC	HEAVY DERRICKS	SPEED
ANGLIA	1920	767	3180	177811	2(30)	10
ANGIYRA	1892	933	3149	185197	1(30),1(10)	10½
BELGION	2015	847	3030	191000	1(30),1(10)	12
BEROLINON	1759	1160	3231	172766	1(30),1(10)	10
CYPROS	3799	2160	6009	225460	1(30),1(20)	10½
EGYPTOS	3805	2123	6009	227730	1(30),1(20)	10½
GERMANIA	2016	841	3035	191000	1(30)	12
PATRAI	2754	1505	5360	260825	1(30)	10
RODOPI	1923	935	3300	167685	1(20)	10
VORIOS HELLAS	1923	935	3300	167685	1(20)	10
ATHINAI	2862	1577	4287	282666	1(30)	16
HELLAS	2862	1577	4250	282665	1(30)	16
HOLLANDIA	2863	1577	4250	280601	1(30)	16
TURKIA	2863	1577	4290	280601	1(30)	16
GRIGORIOS C.III	7227	4465	10739	499573	1(50),1(15)	10½
HELLENIC BEACH	7227	4448	10658	499573	1(50),1(15)	10½
HELLENIC STAR	7254	4461	10756	499753	1(50),1(15)	10½
HELLENIC SKY	7200	4395	10444	499573	1(50),1(15)	10½
HELLENIC WAVE	7208	4398	10444	499573	1(50),1(15)	10½
HELLENIC LEADER	8927	5547	10743	576000	2:10,1:30, 1:50.	16
HELLENIC PIONEER	8927	5545	10743	576000	2:10,1:30, 1:50.	16
HELLENIC HERO	7068	4072	10979	645751	1:50,1:15, 1:10.	16
HELLENIC LAUREL	9550	5770	10578	660000	1:50,1:30, 2:20.	17
HELLENIC DESTINY	9550	5770	10591	659588	1:50,1:30.	17
HELLENIC SPLENDOR	7293	4267	10574	659000	1:50,1:30, 2:20.	17
HELLENIC TORCH	7510	3903	10657	620876	1:50,1:15, 2:10.	15½
HELLENIC GLORY	7510	3903	10657	620876	1:50,2:15, 4:10.	16
HELLENIC SPIRIT	7063	4059	10979	645751	1:50,1:15, 2:10.	16
HELLENIC SAILOR	6281	3700	9853	508000	1:25,2:10.	14



m.s. Hellenic Laurel



m.s. Hellenic Pioneer

REGULAR LINER SERVICES

- | | |
|--|---|
| 1) UNITED KINGDOM/CONTINENT | — GREECE/TURKEY AND BLACK SEA. |
| 2) UNITED KINGDOM/CONTINENT | — LEBANON/SYRIA AND EGYPT. |
| 3) U.S. NORTH ATLANTIC AND GULF
OF MEXICO | — MEDITERRANEAN. |
| 4) WEST COAST U.S.A. | — MEDITERRANEAN. |
| 5) GULF OF MEXICO and U.S. ATLANTIC | — RED SEA/PAKISTAN INDIA/BURMA. |
| 6) GULF OF MEXICO and U.S. NORTH
ATLANTIC | — AQABA (H.K. OF JORDAN) PERSIAN
GULF. |
| 7) U.S.A. | — FAR EAST. |

Board of Directors

Pericles G. Callimanopoulos (*General Manager*)
 Takis Zakas (*Chairman*)
 Gregory P. Callimanopoulos
 Theodore Em. Pangos
 Charalambos D. Antonopoulos
 Pericles Papadopoulos
 Frank Slater
 Athanassios Tsemperopoulos.



Hellenic Lines Limited Regular Services





HELLENIC LINES LIMITED

HEAD OFFICE
AKTIMITIAOULI
PIRAEUS

CENTRAL ASSOCIATED OFFICES AND AGENCIES

HELLENIC LINES LIMITED

39 Broadway
New York 6, NEW YORK, USA
Tel. Add. ELLINIKI Tel. No. Digby 4.3334

HELLENIC LINES LIMITED

319 International Trade Mart,
NEW ORLEANS, 12, Louisiana, USA.
Tel. Add. ELLINIKI Tel. No. CANal 0182

THE FENTON STEAMSHIP CO. LTD.,

Bevis Marks House, Bevis Marks,
LONDON, England.
Tel. Add. FENBURY Tel. No. AVENUE 2763

TURK-HELLEN SEYRISEFAIN ACENTALIGI Ltd., Stl.

Necatibey Cad. Demir Han 214-216 Galata
(or P.O.B. Galata 969)
ISTANBUL, Turkey.
Tel. Add. TURKLENİK Tel. No. 447—192

TURK-HELLEN SEYRISEFAIN ACENTALIGI Ltd., Stl.

P.O. Box 359, IZMIR, Turkey.
Tel. Add. TURKLENIC Tel. No. 23-218

DEUTSCH HELLENISCHE SCHIFFFAHRTSAGENTUR G.m.b.H.

Neue Groeningerstr. 8/10, "Hansahaus",
HAMBURG II, Germany.
Tel. Add. DEUTELLEN Tel. No. 331—581.

AGENTS

VİNKE & CO.

Parklaan 28 (or P.O.B. 1152)
ROTTERDAM, Holland.
Tel. Add. VINKECO Tel. No. 114200

P. van DOOSSELAERE & CO.

4 van Meteren Kaai,
ANTWERP, Belgium.
Tel. Add. VANDOMARIT Tel. No. 33-87-05

JOHN GOOD & SONS (London) Ltd.

Ibex House, Minorities,
LONDON, England.
Tel. Add GOODLIM Tel. No. ROYal 6382

CARL JOH. KLINGENBERG & Co.

P.O. Box 78 Knochenhauerstr 41/42
28 BREMEN I, West Germany.
Tel. Add. KLINGENBERGUS Tel. No. 31 40 41



PETITIONERS' EXHIBIT NO. 6

Registered Owners

**HELLENIC LINES,
LTD.**

CYPRUS
EGYPTOS
LONDINON
PATRAI
VORIOS HELLAS
BELGION
GERMANIA
RODOPI
HOLLANDIA
TURKIA
HELLENIC WAVE
GRIGORIOS C 111
HELLENIC BEACH
HELLENIC SAILOR
HELLENIC SKY
HELLENIC STAR
ITALIA

HELLENIC &
TRANSPACIFIC
HELLENIC
SPLENDOR

**TRANSPACIFIC
CARGO CARRIERS,
INC.**

LIVORNO
ATHINAI
HELLENIC SPIRIT
HELLENIC TORCH
HELLENIC LEADER
HELLAS
HELLENIC GLORY

TRANSPACIFIC &
UNIVERSAL
HELLENIC DESTINY
HELLENIC LAUREL

**UNIVERSAL CARGO
CARRIERS, INC.**

ANGLIA
ANGHYRA
BEROLINON
HELLENIC HALCYON
HELLENIC DOLPHIN
HELLENIC PIONEER
HELLENIC SUNBEAM
HELLENIC CHARM
HELLENIC HERO

<div> <div>LYKES MEDITERRANEAN LINE</div> <div>Will call other Mediterranean ports if sufficient cargo offers</div> </div>									
PORTS	Kenneth McKay		(Clipper) Elizabeth Lykes		Tyson Lykes		Chris'er. Lykes.		Ruth Lykes
SAILINGS	1(4420)	1(4421)	1(4422)	1(4423)	1(4424)	1(4425)	1(4426)	1(4427)	1(4428)
New Orleans	SAILED	JULY 13	JULY 12	JULY 30	AUG. 14	8-13/21	AUG. 25		
Houston	SAILED	SAILED	SAILED	JULY 27	AUG. 8	AUG. 17	AUG. 21		
Galveston	SAILED	SAILED	SAILED		AUG. 9	AUG. 18	AUG. 22		
Orange									
Brownsville						AUG. 11	AUG. 15		
Beaumont			SAILED						
Port Arthur	SAILED								
Corpus Christi						AUG. 10			
Lake Charles									
Pasadena									
Baton Rouge									
Gulfport									
Mobile									
Savannah	JULY 13				AUG. 3				
Charleston	JULY 14	JULY 15			AUG. 4				
Morshad City									
ARRIVALS									
Barcelona	JULY 26				AUG. 14				
Genoa	JULY 29				AUG. 17	AUG. 29	SEPT. 2	SEPT. 7	
Lepore	JULY 31								
Naples						AUG. 31		SEPT. 9	
Venice							SEPT. 6		
Tripoli, Libya	AUG. 5				AUG. 22				
Beirut									
Istanbul	AUG. 1	JULY 31							

[illegible]

HOFUJULI, HILO, KAHULUI, HAWAIIWILI, and PORT ALLEN		Steel Advocate Steel Executive	Isthmian Isthmian
Yoko., Nagoya, Kobe, Osaka, Fus., Inc., Ohta.		Marjorie Lykes	Lykes
MAMILA and SUBIC BAY		William Lykes	Lykes
YOKOHAMA, SASEBO, INCHON		Ashley Lykes	Lykes
Yokohama, Kobe, Osaka, Fusan, Inchon		Joop Lykes	Lykes
Yoko., Nag., Ko., Os., Pus., Int., Kao., Hgh.		Stella Lykes	Lykes
MAMILA		Tillie Lykes	Lykes
Yokohama, Nagoya, Kobe, Osaka, Fus., Ingh.		Mellory Lykes	Lykes
MAMILA		Lillian Lykes	Lykes
Yok., Nag., Ko., Os., Pus., Int., Kao., Hgh.		Azeria Lykes	Lykes
YOKOHAMA, FUSAN, INCHON		Sra.	States
YOKOHAMA, FUSAN, OKINAWA		Garden State	States
YOKOHAMA, OKINAWA, INCHON, FUSAN		Karva	States
YOKOHAMA, OKINAWA, INCHON, FUSAN		Kirogosh	States
YOKOHAMA, OKINAWA, INCHON, FUSAN		Loren	States
Yok., Yekk., Nag., Kobe, Osaka, Fusan, Inchon		London	States
Yok., Yekk., Nag., Kobe, Os., Fusan, Inchon		London	States
YOKOHAMA, FUSAN, INCHON		Steel Seafarer	States
FUSAN, INCHON, DANANG, SAIGON		A Vessel	States
MAMILA, HONG KONG, BANGKOK, SAIGON		Pernak	Form.
		Porndale	Form.
GOR, SINGAPORE, DIAKARTTA, SURABAYA, SEMARANG, BELAWAN DELI		(?)Fornosa	Forn
YOKOHAMA, NAGOYA, KOBE, FUSAN, KEELUNG and KAOHSIUNG		Fornhill	Forn
MAMILA, HONGKONG, BANGKOK, SINGAPORE, PT. SWETHEENHAR, PENANG		Malaysia Seaman	Orient
Mamila, Hongkong, Cebu, Iloilo, Davao		Hongk. Mariner	Orient
Mamila, Hongkong, Cebu, Iloilo, Davao		Hongk. Seafarer	Orient
Yok., Kobe, Hgh., Manila, Cebu, Iloilo, Davao		Hongk. Anchor	Orient
Yok., Kobe, Hgh., Manila, Cebu, Iloilo, Davao		Phil. Rizer	Mar. Co.
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Phil. Corrugator	Mar. Co.
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Zambanga	Mar. Co.
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		A Vessel	Mitsui
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Yokohama Maru	Mitsui
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Kiyomi Maru	Mitsui
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Nishi-maru Maru	Mitsui
Yokohama, Nagoya, Kobe, Osaka, Yokohachi		Motsum Maru	"K"
JAPAN, HONG KONG, TAIWAN		Malacca Maru	Mitsui
JAPAN, HONG KONG, TAIWAN		Waybright	"K"
JAPAN, HONG KONG, TAIWAN		Queen Mary	"K"
JAPAN, HONG KONG, TAIWAN		Highland	"K"
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Kyusei Maru	H. Y.
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		New York Maru	H. Y.
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Kiyomi Maru	H. Y.
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Yokohama Maru	H. Y.
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Hiyokuro Maru	Shinn
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Machikuru Maru	Shinn
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Yosokura Maru	Shinn
Yokohama, Nagoya, Yokohachi, Kobe, Osaka		Yamatochi Maru	Shinn
Hongkong, Diakartta, Penang, Singapore,		Tohago	C. T. Co.
Keelung, Kaohsiung, Yokohama, Kobe		Union Concord	China
KEELUNG, KAOSHIUNG, YOKOHAMA, KOBE		Chungking Victory	China
KEEL JAO, KAOSHIUNG, YOKOHAMA, KOBE		A Vessel	China
Yokohama, Kobe, Naha, Keelung, Zambonga		Hai Dub	China
Yokohama, Kobe, Naha, Keelung, Zambonga		Hai Hain	China
Yokohama, Kobe, Naha, Keelung, Zambonga		Hai Hain	China
Penang Pt. Swettheenhar, Singapore, Diakartta		Los Malling	Blue S.
PENANG, PORT SWETTHEENHAR, SINGAPORE		Tajumoon	Blue S.
PENANG Pt. Swettheenhar, Singapore, Diakartta		Felix	Blue S.

(CONTINUED ON REVERSE)

DAILY SHIPPING GUIDE
Published by the Guide Publishing Co., Inc.
OFFICE: 516 Natchez St. New Orleans, La. 70130 Phone 523-3243-4
A. L. FRANCE, Business Manager
W. E. DOWS, JR., Editorial Director E. R. LANDRY, Editor
Representatives at and covering vessel movements at Beaumont, Brownsville, Corpus Christi,
Galveston, Gulfport, Houston, Lake Charles, Mobile, Orange, Pensacola, Port Arthur, Port Neches and
Tampa.
ISSUED DAILY EXCEPT SATURDAYS, SUNDAYS AND HOLIDAYS

SERVICES FROM HOUSTON

UNITED KINGDOM				
Craftsmen	Harrison	Leblanc Parr, Inc.	July 21	July 23
Zenobia	Harrison	Leblanc Parr, Inc.	July 21	July 23
Isabella Maria	Cunard	Funch, Edye & Co., Inc.	July 13	July 15
Mahout	Cunard	Funch, Edye & Co., Inc.	Aug. 3	Aug. 5
Zoeila Lykes	Lykes U. K.	Lykes Bros. SS. Co.	Inc. Port.	July 13
David Lykes	Lykes U. K.	Lykes Bros. SS. Co.	July 21	July 23
James Lykes	Lykes U. K.	Lykes Bros. SS. Co.	July 21	July 22
Harry Colbreath	Lykes U. K.	Lykes Bros. SS. Co.	July 31	Aug. 1
Joan Lykes	Lykes U. K.	Lykes Bros. SS. Co.	Aug. 6	Aug. 7
London	Exp	Funch, Edye & Co., Inc.	July 19	July 19
Ohio	London Exp	Funch, Edye & Co., Inc.	Aug. 3	Aug. 4

EGYPT—ITALY and MEDITERRANEAN PORTS—					
ON.	Mal Adriatic	Narvon	Rice, Kerr & Co. Inc.	July 24	July 25
	Mar Tirreno	Narvon	Rice, Kerr & Co. Inc.	Aug. 10	Aug. 10
	Mar Negro	Narvon	Rice, Kerr & Co. Inc.	Aug. 14	Aug. 14
	Spirafels	Narvon	E. S. Binnings, Inc.	July 14	July 18
	Westerfels	Narvon	E. S. Binnings, Inc.	July 24	July 27
	Friedland	Medflydd	Strachan Shipping Co.	July 14	July 14
	Miss Lloyd	Medflydd	Strachan Shipping Co.	July 26	July 27
James	A Vessel	States Mar.	States Mar. Isthmian		
	Ecuador	Isthmian	States Mar. Isthmian	July 17	July 17
	Steel Director	Isthmian	States Mar. Isthmian	July 21	July 21
	A Vessel	Isthmian	States Mar. Isthmian	Aug. 14	Aug. 14
	Fishers' Maya	Hoegh	Hoegh & Co.	July 29	July 29
	Hoegh Dana	Hoegh	Rice, Kerr & Co.	Aug. 20	Aug. 22
	Hoegh Carin	Hoegh			

ABIAN GULF—RED SEA PORTS—					
Cole, Steel Scientist	Isthmian	States Mar.	Isthmian	July 17	July 17
Marsh Ecuador	Isthmian	States Mar.	Isthmian	July 15	July 16
Cash, Steel Co.	Isthmian	States Mar.	Isthmian	July 21	July 21

AMERICAN AND FOREIGN VESSELS IN PORT AT NEW ORLEANS							
Arrived	Vessel	Flag	Captain	Dock	From	Consignee or Agent	Destination
July 9.	Alessandra F.	Ital. MS.	Zorri.	Washington A	Foreign.	Texas Transp. & T.	
July 7.	Amelie Thyssen	Ger. MS.		Baton Rouge	Coastwise	Hansen & Tidemann, Inc	
July 10.	Andrea Gritti.	Ital. MS.	Bilo.	Mandeville St.	Houston	Biehl & Co., Inc	Mediterranean
July 13.	Angela.	Lib. MS.	Bastos.	Erato St.	Port Arthur	United Fruit Co.	Belize, Pto.
July 6.	Apurimac	Peru MS.	Gurn.	St. Andrew St.	Coastwise	Hansen & Tidemann, Inc	Guayaquil.
July 10.	Australian City	Br. MS.	Harvey.	Cotton Whse.	Cristobal.	States Mar.-Isthmian	
July 5.	Aw To.	Chin. Str.		At Point	Houston	B. R. Marine Contrs.	
July 9.	Axeline Brodin.	Swed. MS.	Andresson.	Julia St.	Baton Rouge	Dalton SS. Corp.	Far East Po
July 7.	Azar.	Lib. Str.	Kolaitis.	Powdras St.	Cristobal.	Dalton SS. Corp.	
July 3.	Baluchistan.	Br. MS.	Fulcher.	Gov. Nicholls.	Port of Spain.	Fowler & McVitie, Inc.	
July 13.	Baumare.	Nor. Str.	Authenson.	Baton Rouge.	Port Kaiser	Kaiser Alum. Corp.	Port Kaiser
July 11.	Canterbury Leader.	Am. Str.		Stuy. Docks.	Puerto Rico.	Dalton SS. Corp.	
July 5.	Chatham.	Am. Str.	Rhodes.	Orange St.	Port Said.	Waterman SS. Corp.	
July 10.	Dartmouth.	Lib. MS.		Westwego.	Halifax.	Strachan Shpg. Co.	
July 10.	Ecuador.	Den. MS.	Jacobsen.	Ossire St.	Foreign.	Standard Fruit & S. Co.	
July 10.	Elwell.	Am. Str.	Rismudo.	Orange St.	Norfolk.	Waterman SS. Corp.	
July 11.	En Gadi.	Isr. MS.		Baton Rouge.	Port Kaiser	Kaiser Alum. Corp.	
July 12.	Envia.	Lib. Str.	Lembrinakos.	At Point	Santa Maria.	Overseas Freight.	
July 27.	Fanwood.	Am. Str.	Hansen.	Orange St.	Norfolk.	Waterman SS. Corp.	
July 12.	Fernbrook.	Nor. MS.	Olson.	Mandeville St.	Mobile.	Biehl & Co., Inc	Manila, Hong
July 2.	Gencil.	Turk. MS.	Costantini.	Julia St.	Mobile.	Dalton SS. Corp.	
July 13.	Gibbes Lykes.	Am. Str.	Evansen.	Nashville Ave.	Houston.	Lykes Bros. SS. Co.	Seigon and
July 13.	Gorredyk.	Neth. MS.	Pathof.	First St.	Lake Charles.	Texas Transp. & T.	Continent P
July 12.	Hellenic Dolphin.	Grk. Str.		Florida Ave.	Coastwise	Hellenic Lines, Ltd.	
July 11.	Hellenic Hero.	Grk. MS.	Barraris.	Florida Ave.	Norfolk.	Hellenic Lines, Ltd.	Alexandria,
July 9.	Hollybank.	Br. MS.	Webb.	Harmony St.	Lake Charles.	Strachan Shpg. Co.	
July 10.	Hongkong Exporter.	Br. Str.	Ken.	At Point	Houston	West Coast Line, Inc.	
July 12.	Hurricane.	Am. Str.	Berron.	Orange St.	Coastwise	Waterman SS. Corp.	Azores, Cad
June 18.	John Lybe II.	Lib. MS.		Baton Rouge.	New Orleans.	Hellenic Lines, Inc.	
July 9.	John F. Shea.	Am. Str.	Stukenborg.	Orange St.	Bremerhaven.	Waterman SS. Corp.	Continent P
June 11.	Kaperan Georgis.	Lib. MS.	Amstoidam.	Harmony St.	Foreign.	Strachan Shpg. Co.	
July 7.	Kostas Prios.	Grk. MS.	Paleokrassos.	Burnside.	Corpus Christi.	Ramsey Scarlett.	
July 12.	Kragholm.	Swiss. MS.	Magnusson.	Harmony St.	Mobile.	Strachan Shpg. Co.	Continent a
July 11.	Louise Lykes.	Am. Str.	Alley.	Nashville Ave.	St. Croit.	Lykes Bros. SS. Co.	Tunis, Islen
July 8.	Loveland.	Nor. MS.	Bourne.	Blenville St.	St. Croit.	Alcoa SS. Co.	
July 23.	Malacca Maru.	Jap. MS.	Kanamaur.	Robin St.	Mobile.	Kerr SS. Co., Inc.	Far East Po
Mar 31.	Maria Fient.	Lib. Str.		Harmony St.	Lv. Charles.	Strachan Shpg. Co.	
July 12.	Marjorie Lykes.	Am. Str.	Frazier.	Poland St.	Galveston.	Lykes Bros. SS. Co.	Far East Po
July 10.	Miho Pracet.	YS. MS.		Baton Rouge.	Yugoslavia.	Dalton SS. Corp.	
July 11.	Miho Frontiers.	Lib. MS.	Junkenrenken.	St. Andrew St.	Houston.	Hansen & Tidemann, Inc.	
July 13.	Omar Express.	Pan. MS.	Navarro.	Baton Rouge.	Coastwise.	Rogers Terminal	
July 6.	Passade.			At Point		Levy & Co., Inc.	
July 5.	Point Sur.			Poland St.		M. S. T. S.	
July 10.	Revere.	Lib. MS.	Bengoechen.	Burnside.	Paramaribo.	Ramsey Scarlett.	
July 3.	Rio Barima.	Lib. Str.		Baton Rouge.	Coastwise.	Dalton SS. Corp.	
July 7.	Rio Mar.	Lib. MS.		St. Andrew St.	Foreign.	Hansen & Tidemann, Inc.	
July 9.	St. Clair de Ville.			Burnside.	Paramaribo.	Ramsey Scarlett.	
Mar 15.	Santa Sofia.	Lib. Str.	Fachschies.	Harmony St.	Baton Rouge.	Strachan Shpg. Co.	
July 10.	Santo Carro.	Nor. MS.	Fawcett.	Erato St.	Pro. Cortes.	United Fruit Co.	
July 24.	Sira.	Nor. MS.	Moey.	Cotton Whse.	Inchon.	States Mar.-Isthmian	Far East Po
July 13.	Solohe Turman.	Am. Str.	Beatty.	Nashville Ave.	Cristobal.	Lykes Bros. SS. Co.	
July 12.	Southern Star.	Pan. MS.	Webster.	Toulouse St.	Fort Libert.	Gulf Coast Shpg. Corp.	

Remarks	Cargo
(on berth)	Galvez via Houston by E. S. Binnings, Inc.
(on berth)	From Colombia: Order, 500 bags coffee, 126 ctns. rayon filament yarn.
(on berth)	From Costa Rica: Order, 1580 sacks clean coffee, 198 bas. veneer, 10 cs. books.
(on berth)	From Guatemala: Allis Chalmers Int., c/o Judson Sheldon International, 27 cs. spare pts. for tractors. Edwards Engineering Corp., 1 cs. hydraulics accumulators.
(on berth)	HONGKONG EXPORTER, Br. MS. 4527, L. Yian Ken-Clum Houston by West Coast Line, Inc.
(on berth)	In ballast. ESSO GENOVA, Ital. Tkr., 13,895 C. Guano from Amury Bay by Humble Oil & Refining Corp.
(on berth)	From Venezuela: Humble Oil & Refining Co., 1,597,780 long tons distillate fuel-heavy.
(on berth)	Also transit cargo. SOUTHERN STAR, Br. MS. 194, C. Webster from Santo Domingo, Barahona, Fort Liberté by Gulf Coast Shpg. Corp.
(on berth)	From Haiti: International Sisal Corp., 200 bls. sisal fibers.
(on berth)	From Dominican Republic: Baltac Bros. & Co., 682 sacks coffee.
(on berth)	Order, 2447 bags coffee.
(on berth)	SERVICEMAN, Br. MS. 55, H. Pedersen from Hull by Zanelli Maritime Inc.
(on berth)	In ballast. ANCO STORA, Br. M-Tkr., 5086, K. Richmond from Philadelphia by Texas Transp. & T. Co.
(on berth)	Transit cargo. GULFUPPERME, Am. Tkr. 12,279, J. Babino from Freeport by Gulf Oil Corp.
(on berth)	In ballast. ASHLEY LYKES, Am. Str., 5916, H. Mason from Annapolis, Bremen, Bremerhaven, Southampton, Havre by Lykes Bros. SS. Co., Inc.
(on berth)	From Belgium: Order, 1075 cls. wire and barbed wire, 1850 bags chicory, 90 pks. cotton ties, 330,940 kilos steel.
(on berth)	From Germany: Order, 80 rls. paper, 205 auto covers, tubes and spare parts, 1 cs. spare pts. for power shovels, 1 cs. advertising materials, 46,911 kilos steel, 129 cs. window glassware, 135 drs. copper tubes, 14 cs. earthenware, 1 cs. cuckoo clocks, 118 ctns. christmas tree ornaments, 4 ctns. tissue paper, 500 cs. beer. Geor. Wm. Buell, 101 cs. auto spare pts.
(on berth)	Maher & Co., 4 cs. glassware.
(on berth)	Sears Roebuck & Co., notify J. Gardner c/o Sears Import Pool, 25 pallets, crockery, 163 cart mopeds.
(on berth)	Messrs Deutz Diesel Corp., 2 cs. diesel motors.
(on berth)	Also transit cargo. KRAGHOLM, Swed. MS., 2011, N. Lindquist, for Norrköping, Gdylia, Gothenburg, Aardi via Mobile by Strachan Shpg. Co.
(on berth)	From Sweden: Le Luz Mines Ltd., c/o H. S. Renshaw Inc., 1 cs. office materials.
(on berth)	Order, 25 skids hardwood, 20 kags farmless chemicals, 19 pkgs. electrical equippt., 15 block granite.
(on berth)	Order, 26 pallets hardwood, 3000 cs. tiles. Uddholm Steel Corp., notify International Trade Mart, 1323 kilos steel.
(on berth)	International Distributors, Inc., care of V. Alexander & Co., 47 cs. files.
(on berth)	V. Alexander & Co., 16 cs. fish-hooks.
(on berth)	W. R. Zanes & Co., 3 cs. fish-hooks.
(on berth)	Deve Streifher & Co., 500 ctms. beer, 1 cs. advising materials, 30 ctms. tobacco.
(on berth)	Frank W. Strachan Esq., 1 parcel toilet requisites.
(on berth)	Trelleborg Rubber Co., 241 bls. bicycle tires.
(on berth)	Osmose Wood Preserving Co., c/o Herrin Transfer & Whse Co., 150 drs. salt.
(on berth)	SS "Balmora" c/o Swedish American Line Gulf Service, 703 ship paint.
(on berth)	"Benardot" c/o United Fruit Co., 1 cs. diesel engine spares.
(on berth)	Bieh & Co., Inc., 1 cs. piston rings.
(on berth)	Sandvik Steel Inc., 6019 kilos steel.
(on berth)	Delta Match Corp., 4 cs. machinery pts.
(on berth)	Rolf Frazier Inc., 40 ctms. curtain rods.
(on berth)	Sears Roebuck & Co., 95 ctms. glassware.
(on berth)	Penson & Co., notify M. G. Maher & Cot, 52 cs. leather handbags, glassware, toys, candles, woodenware and metal kitchen utensils.
(on berth)	Allied Chemical International Corp., 1 pc. empty cylinders.
(on berth)	From Finland: Order, 805 ctms. crockery.
(on berth)	Dalton Match Corp., 200 cs. chlorate of

JULY 10, Galveston, arr. July 10)
Morocco, Ital. Str. # 4003
 Tampa, sid. June 14 Genoa
 + Civitavecchia Naples, Palermo,
 Trieste, Venice, Mistrà, Porto
 Marghera and Ancona—(Via
 New Orleans, sid. June 18, Mobile,
 sid. June 20, Galveston,
 sid. June 22 and Houston, sid.
 June 24)
Montevideo, Ital. Str. # 4048
 N. Orleans, sid. May 12 Genoa
 + Vado Ligure, Naples, Messina,
 Trieste, Venice, Mestre and Ravenna—
 (Via Lt. Charles, sid. May 14,
 Brownsville, sid. May 16, Galveston,
 sid. May 18 and Houston, sid.
 May 21)
Moruevia, Ital. MS. # 5694
 New Orleans, sid. May 28 Genoa
 + Naples, Trieste, Venice, Mestre
 and Ravenna—(Via Galveston, sid.

July 15—(Via Houston, sid. July 17
 and N. Orleans, sid. July 17)
Panagiotis Lemos, Lib. MS. # 4696
 Baton Rouge, sid. July 8
Panagiotis N. K., Grk. MS. # 2055
 N. O., sid. June 9 Buenos Aires
Pancoson, Pan. Str. # 2147
 (Baton Rouge)
Panorea, Grk. MS. # 2614
 Houston, sid. July 11
 —(Via Orange, sid. July 10)
Panorea, Grk. MS. # 2614
 Houston, sid. July 11—New Orleans
Parce, Lib. Str. # 816
 Mobile, sid. June 8 Albany
Partenion, Neth. MS. # 1805
 Mobile, sid. June 3 Margarita
 + Bachaquero, Willemstad, Em-
 mastad, Oranjestad, La Guaira,
 Pto. Cabello, Port of Spain, Guyana,
 Paramaribo, Surinam and
 Georgetown—(Via Houston, sid.
 June 10 and N. Orleans, sid. June 11)

**Pt. Sed., Dith., Bannah, Cochín, Colom.,
 Ft. Sejo, Jo. Mas, Ba., Da. Ke, Ab., Be.
 (Batavia), Sid. June 10**
 wait, Akodon, Barrah, Khramashah
 Menz., Dith., S. Shah., Kho., Karv., So.
 Menz., Dith., S. Shah., Kho., Karv., So.
 Menz., Dith., S. Shah., Kho., Karv., So.
 Apsha, Mass., Assach., Dth., S. Shah., Kho.
CHITTAGONG and KARACHI — Calcutta
 Aden, Cochin, Bombay, Madras, Calcutta
 Aden, Cochin, Bombay, Madras, Calcutta
 Karachi, Khormas., Basra, Rahr., Lav
 Karachi, Khormashah, Basrah, Damman
JEDDAH and ADEN
JEDDAH, DISOUTI, ADEN
JEDDAH and COLOMBO
 Aden, Ft. Sultan, Chittagong, Calcutta,
 Jeddah, Pt. Sudan, Karachi, Chittag., Cal.
 Apsha, Damman, Karachi, Khormashah
 and Basrah
 Dubai, Damman, Karachi, Khormashah
 Basrah and Umm Said

Mont Aigoual, Fr. MS. 5338
 Pt. Arthur, sld. May 27 *Marselles*
 Mont Cenis, Fr. MS. 4985
 Tampa, Fla. MS. 30
 Cartagena
 Mont Jorio, Lib. Sir. 4235
 Port Arthur, sld. June 22 *Emden*
 Montello, Ital. MS. 4893
 New Orleans, sld. July 9 *Hull*
 Monte Pegasus, Spain. MS. 4145
 Mt. Orens, sld. June 8 *Barcelona*
 Monte Sain, Spain. MS. 6007
 B. Rouge, sld. May 25 *Barcelona*
 Monte Solilube, Spain. MS. 5557
 N. Orleans, sld. June 28 *Barcelona*
 Morazan, sld. 2764
 N. Orleans, sld. July 1 *Kingston*
 Morazan and Balboa
 Morelia, Dan. MS. 5092
 Pt. Arthur, sld. May 21 *Hamburg*
 & Rotterdam *(Via Houston, sld.*
 May 24 and New Orleans, sld.
 May 27)
 Narven, sld. MS. 17245
 N. Orleans, sld. June 25 *Paranaribo*
 Houston, sld. July 7 *Miami*
 Patmos, Lib. Sir. 4801
 Houston, sld. May 11 *Vere Cruz*
 Patricia, Lib. MS. 2985
 Galveston, sld. Apr. 10 *Calcutta*
 Patricia Smith, Pen. Sir. 1414
 Freeport, sld. June 12 *Carinto*
 (Via Galveston, sld. June 14)
 Pearl Creek, Lib. MS. 5182
 Houston, ar. July 11
 Pearl Island, Lib. MS. 6743
 New Orleans, sld. July 8 *Yokohama*
 Pearl Merchant, Lib. MS. 6742
 Port Arthur, sld. July 8
 Peder Binde, Nor. MS. 1079
 N. Orleans, sld. June 19 *Seibo*
 & Cutuco
 Pelican State, Sir. 4586
 Galveston, sld. May 29 *Yokohama*
 & Nagoya, Yokkaiichi, Kobe, Osa-
 ka, Fusan, Inchon, Keelung and
 Okinawa *(Via Houston, sld. May*
 30, Galveston, sld. May 30
 & Cutuco, sld. June 1, 1901
 AQABA
 Ben. Chichin, Madras, Cal., Jeddah, Djib-
 outi, Kowshi, Khartoum, Sharan
 Bahr, Karachi, Bombay
 CHITTAGONG and KALACHI
 (1) Omits Uman Said, Also calls Don Island
 Calla, Doolah, Balboa, Baidoo, Kar-
 (1) Omits Khar El Marfate, Abadung Ak
 —AUST—
 Brish, Newc., Syd., Mello, Adelaide, Ne-
 Papeete, Brisbane, Sydney, Mello, Ade-
 AUSTRALIAN PORTS
 AUSTRALIA
 NEW ZEALAND
 —HAWA—
 TOKOHAMA, SATEBO, INCHON
 Yokoh., Nagoya, Kobe, Fusan, In-
 Yoko, Nag. Ok. O. Fusan, Inc. Kao.
 MANILA, HONGKONG, SANGKOK, S.

Moelave, ref. A.C.	7	Corinto	Yoko. Ang. K. Pan. Can. High. K.
Tempe, sid. Apr.	7	Hosey, Champerlon, Kobe,	Yokohama, Kobe, San. Can. Hain. D.
Ozaka, Ube, Nagoya and Yoko-			Manila, Hongkong, Cebu, Hain, Davao
hama—Via Galveston, sid. Apr.			Yokohama, Nagoya, Kobe, Osaka, Yoko-
11)			Yokohama, Nagoya, Kobe, Osaka, Yoko-
Moslevine, Y.S. MS.	5402		YOKOHAMA, OKINAWA, INCHON, PUSA-
N. Orleans, sid. June 12	Koper		YOKOHAMA, OKINAWA, INCHON, PUSA-
Mukoharu Maru, Jap. MS.	4400		YOKOHAMA, OKINAWA, INCHON, PUSA-
New Orleans, Ar. July 12			Yoko, Yoko, Hain, Kobe, Osaka, Pusan,
Musi Lloyd, Neth. MS.	5630		PUSAN and INCHON
Mobilis, sid. Apr. 8			Yokohama, Yokohakoh, Nagoya, Kobe, C
and Larfakia, De Island, Kuwait,			Yokohama, Yokohakoh, Nagoya, Kobe, C
Khoramshahr and Basra—Via N.			JAPAN, HONG KONG, TAIWAN
Orleans, sid. Apr. 10, Houston,			JAPAN, HONG KONG, TAIWAN
sid. Apr. 16 and New York)			Yokohama, Yokohakoh, Nagoya, Kobe, C
Myriam, Grk. MS.	2114		Yokohama, Yokohakoh, Nagoya, Kobe, C
Port Arthur, sid. Apr. 17	Emden		KEELUNG, KAOHSIUNG, TONGHARA,
Myron, Lib. MS.			Yokohama, Kobe, Hain, Koshing,
Houston, Ar. July 2			Yokohama, Kobe, Hain, Koshing,
Nystras, Lib. Str.	5834		Yokohama, Kobe, Hain, Koshing,
Galveston, sid. Apr. 26	Callao		Yokohama, Kobe, Hain, Koshing,

N
Nabo, Pan. MS. 529
Houston, Md. July 5. Santa Maria
(Via Tampa, Md. July 8)
Nanea Clarion, Br. MS. 15851
Oliverson, stud. June 24, Tampere
and Los Angeles)
Philippine Bazaar, Phil. MS. 5251
Brownville, Md. Apr. 25. Manila
& Hongkong, Cebu, Iloilo, Davao,
Dediangas, Iligian City and San
Padang, Palembang, Sempai Gering, Sing
apore, Port Swettenham, Belawan, Penan
PENANG, PORT SWETTENHAM, SING
APORE and DIJAKARTA
DIJAKARTA and SURABAYA

Nabso. Pan. MS.	529	Philippine Bataan, Phil. MS.	5251	Pading, Palembang, Sengul Gering, Sing
Houston, std. July 5 Santa Marta		Brownsville, std. Apr. 25 Manila		gora, Port Swettenham, Sulawesi, Puan
(Via Tampa, std. July 8)		Da Nang, Cebu, Iloilo, Devao,		PEKING, PORT SWETTENHAM, SINGO
Nassau Clerion, Br. MS.	15851	Diendangs, Iligan City and San		PORT and DIAKARTA
Beumout, std. May 13		Fernando La Union (Via Houston)		DIAKARTA and SURABAYA
Nassau Jupiter, Near. Str.	9744	std. Apr. 28, Gahwah, std. Apr.		
Mobile, std. June 12 Rocky		29, N. Orleans, std. May 4, Los		
9523		Angeles and San Francisco)		

Mobile, slid. May 4-Pt. of Spain	Philippine Corridor, Phil. MS 5216	
Nagasaki Maru, July MS. 4147	N. Orleans, slid. Apr. 16-Hongkong	SOUTH and EAST AFRICA
Houston, slid. Apr. 28-Yokohama	& Manila, Cebu, Iloilo and Devo-	SOUTH and EAST AFRICA
& Kawasaki, Nagoya, Kobe, Oga-	—(Via Galveston), slid. Apr. 19.	SOUTH and EAST AFRICA
ka and Yokohaki—(Via Galveston),	Mazatlan, Ensenada and Los An-	WEST AFRICA
slid. Apr. 29, Honolulu, slid. May 7	giles)	WEST AFRICA
2, Manila, slid. May 7, Tampa,	Philipine J. A. Santos, Phil. MS 5189	WEST AFRICA
slid. May 10, Pensacola, slid. May	N. Orleans, slid. May 24-Hongkong	WEST AFRICA
11, New Orleans, slid. May 12,	& Manila, Cebu, Iloilo, Devo,	WEST AFRICA

Lake Charles, sld. May 1, Houston, sld. May 16, Mazatlan and Guaymas) 4561

Batavia	Kor. Str.	531	slid. June 5, Saline Cruz, Matatlan	BUENOS AIRES
Port Rouge, slid. May 4	Pusan	532	(Los Angeles)	SANTOS, MONTEVIDEO, BUENOS AIRES
I. Inchon—(Via N. Orleans, slid. May 8, Mobile, slid. May 10 and Galveston, slid. May 14)	Philippines, Phil. MS.	4772	Carinto	Colombia, Ecuador, Peru, Bolivia, Chile
Nancy Lykes, Str.	Tampa, slid. May 31	51	—	Colombia, Ecuador, Peru, Bolivia, Chile
Houston, slid. June 8	—	5249	—	Colombia, Ecuador, Peru, Bolivia, Chile
—	Philippines—President Osmeña, PHILMS	5249	—	BUENOS AIRES, MONTEVIDEO, HAMBURG
—	Tampa, slid. July 5	5	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	5146	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	5938	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	7095	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	4804	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	1854	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	1819	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	21	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	27	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	5746	—	Baryonville, Cartagena, Cristobal, Ecuador
—	—	11	—	Baryonville, Cartagena, Cristobal, Ecuador

[illegible]

SUNDAY, AUGUST 14		
For East Ports	Marburg	Bieh & Co. Inc.
Continental Ports	Fernex	Bieh & Co.
Mediteranean Ports	Christophor Lyka	Lykes Bros. SS. Co. I
Continental and Scandinavia	Stureholm	Strachan Shpg. Co.
Mediterranean Ports	Amazonas	Amerind Shpg. Corp.
Spanish Ports	Kerr SS. Co. Inc.	
MONDAY, AUGUST 15		
London, Oslo, Copenhagen, Gdynia	Gran Rio	Funch, Edye & Co.
Santo Domingo and Paramaribo	Yamatoshi Maru	Hansen & Tidemann
Far East Ports	Hai Hsin	Texas Transp. & T.
For East Ports	Steel Surveyor	Abauza SS. Corp.
Aqaba, Karachi, Madras, Calcutta		States Mar. Isthmian
TUESDAY, AUGUST 16		
United Kingdom	Daleman	LeBlanc-Parr, Inc.
Far East Ports	Hongk. Anber	West Coast Line
West Africa	Nopal Sun	Bieh & Co. Inc.
Brazil & River Plate	Del Norte	Delta SS. Lines
Continental	Nabob	Ciu. de Armasia
Barran, Cart., Crist., Buen., Guay., Pan	Ciu. de Armasia	F. S. Binnings, Inc.
Mediterranean Ports	Mondoro	Texas Transp. & T.
Red Sea, Persian Gulf, Pakistan, India, Mal	Central Gulf Lines	
WEDNESDAY, AUGUST 17		
Med. Red Sea, Indonesia	Hoogh Calm	Kerr SS. Co. Inc.
Far East Ports	Kyomei Maru	Dalton SS. Corp.
For East Ports	Circo	E. S. Binnings, Inc.
Salv., Rio de Jan., Santos, Rio Gr., P. Alex	Loide SS. Domini	Lloyd Brasileiro
THURSDAY, AUGUST 18		
For East Ports	Chungking Vico	Gulf Motorships, Inc.
Alex., Pt. Ed., Suz., Jedd., Aden, Penang	Felix	Funch, Edye & Co.
Australian Ports	Australian Gem	Lykes Bros. SS. Co.
Far East	Mallory Lykes	Lykes Bros. SS. Co.
Cristobal, Balboa, Puntar., Corinto, La Lir	Chetah	Jan C. Uiterwyk Co.
Rio de Janeiro and Santos	Barao do Rio Brai	Lloyd Brasileiro
FRIDAY, AUGUST 19		
Panama and Colombia	Annelise Port	Ciu. de Santa Ma
Puerto Limon and Santa Marta	Kirksons	Gulf Engg. Co.
Kingston	Triton	Strachan Shpg. Co.
Will., Orang., LaG., Guan., F. of S., Brid	Tillie Lykes	Lykes Bros. SS. Co.
Far East Ports	Zamboanga	Ayers SS. Co., Inc.
Far East Ports		
SATURDAY, AUGUST 20		
Mediterranean Ports	Victor Piani	Lykes Bros. SS. Co.
Kingst., Pt. of Spain, Georgetown, Belam	Dunstan	Lykes Bros. SS. Co.
West Africa	Del Aires	Delta SS. Lines
Continental Ports	Woltersum	Amerind Shpg. Corp.
SUNDAY, AUGUST 21		
Mediterranean Ports	Elizabeth Lykes	Lykes Bros. SS. Co.
Continental and Scandinavia	Toronto	Strachan Shpg. Co.
Continental Ports	Almea Lykes	Lykes Bros. SS. Co. I
Spanish Ports	Mar Negro	Kerr SS. Co. Inc.
Cris., Bat., Buenav., Guay., Call., Mater	Gulf Trader	Gulf & Sd. Am. SS.
MONDAY, AUGUST 22		
Continental Ports	Libreville	Texas Transp. & T.
Far East Ports	Steel Seafarer	States Mar. Isthmian
TUESDAY, AUGUST 23		
London, Oslo, Copenhagen, Gdynia	Oklahoma	Funch, Edye & Co.
Meditor., Red Sea, Persian Gulf	Hastings	Waterman SS. Corp.
Barran., Cart., Crist., Buen., Guay., Pan	Cart. de India	E. S. Binnings, Inc.
Brazil and River Plate	Nopal Progress	Bieh & Co., Inc.
WEDNESDAY, AUGUST 24		
Manchester, Liverpool, Glasgow	Highland	Funch, Edye & Co.
Far East Ports	Westbury	Kerr SS. Co. Inc.
Continental	Kendall Fish	Hansen & Tidemann
South and East Africa		Lykes Bros. SS. Co.
THURSDAY, AUGUST 25		
Mediterranean Ports	Ruth Lykes	Lykes Bros. SS. Co.
Far East Ports	Lipscomb Lykes	Lykes Bros. SS. Co.
Continental	Westfalen	Bieh & Co.
Red Sea, Persian Gulf, Pakistan, India, Mal	Orient City	Central Gulf Lines

VESSELS DUE TO ARRIVE NEW ORLEANS

FROM	VESSEL	AGENT
THURSDAY, JULY 14		
Inchon	London Craftsm	States Mar. Isthmian
Santos	Loide Mexico	Lloyd Brasileiro
Panama City	Nobaldo	Texas Transp. & T.
Houston	Harford	Texas Transp. & T.
Houston	Frisia	Jan C. Uiterwyk Co.
Houston	Padua	Lykes Bros. SS. Co.
Calcutta	Elizabeth Lykes	Lykes Bros. SS. Co.
Houston	Steel Scientist	States Mar. Isthmian
Houston	Solon	Strachan Shpg. Co.
Houston	Diane	West Coast Line, Inc.
Houston	Ciu. de Neiva	E. S. Binnings, Inc.
Baltimore	Custodian	LeBlanc-Parr, Inc.
Mobile	Banor	Waterman SS. Corp.
Houston	Maiden Creek	Gulf Pto. Rico Line
Port Au Prince	Merida	Texas Transp. & T.
Houston	Levi Viking	Alcoa SS. Co.
Abidjan	Westwind	Bieh & Co., Inc.
Houston	Finnermerant	Texas Transp. & T.
Port Arthur	Lindenbank	Dalton SS. Corp.
		Strachan Shpg. Co.
FRIDAY, JULY 15		
Manila	Hongk. Delegate	West Coast Line, Inc.
Houston	Admiral Zmajevic	Gulf Coast Shpg.
Venice	Reuben Tipton	Lykes Bros. SS. Co. I
Port Everglades	Tyson Lykes	Lykes Bros. SS. Co. I
Kuwait	Thalatta	Bieh & Co., Inc.
Balboa	Santo Carro	United Fruit Co.
Keelung	Nai Dai	Abauza SS. Corp.
Houston	Yamatoshi Maru	Strachan Shpg. Co.
Houston	Hiyoharu Maru	Texas Transp. & T.
Mobile	Alcoa Ranger	Alcoa SS. Co.
SATURDAY, JULY 16		
Esauumont	Zoella Lykes	Lykes Bros. SS. Co.
Mobile	Garden State	States Mar. Isthmian
		E. S. Binnings, Inc.
SUNDAY, JULY 17		
Houston	Fernpoint	Strachan Shpg. Co.
Venice	Monflore	Texas Transp. & T.
Puerto Cortes	La Bonita	Hansen & Tidemann

Brownsville	Jeddah	Strachan Shpg. Co.
Houston	Tampa, sld. Apr. 21	Texas Transp. & T.
Houston	Marina Schulte, Grk. MS.	E. S. Binnings, Inc.
Houston	West Coast Line	West Coast Line
Houston	Strachan Shpg. Co.	Strachan Shpg. Co.
Mobile	Wahlerman SS. Corp.	Wahlerman SS. Corp.
	Gulf & So. Am. SS. Co.	Gulf & So. Am. SS. Co.
THURSDAY, AUGUST 17		
Mobile	Gunhild Tarm	Kerr SS. Co. Inc.
Inchon	London Advoca	States Mar. Isthmian
Mobile	Phillip Corredio	Ayers SS. Co., Inc.
FRIDAY, AUGUST 18		
Houston	Nopal Rex	Bieh & Co. Inc.
Houston	Fernex	Bieh & Co.
Brownsville	Hansen & Tidemann	Hansen & Tidemann
Houston	Elizabeth Lykes	Lykes Bros. SS. Co.
Houston	Tannstein	Bieh & Co. Inc.
Houston	Jean Lykes	Lykes Bros. SS. Co. I
Tampa	Strachan Shpg. Co.	Strachan Shpg. Co.
Houston	Ciu. de Armasia	E. S. Binnings, Inc.
Mobile	Circo	E. S. Binnings, Inc.
Beaumont	Marburg	Bieh & Co. Inc.
Houston	Viava Kiri	Abauza SS. Corp.
Beaumont	Hellenic Star	Hellenic Lines Ltd.
Beaumont	Hansen & Tidemann	Hansen & Tidemann
Houston	Mar Tiro	Kerr SS. Co. Inc.
SATURDAY, AUGUST 19		
Galveston	Groedylek	Texas Transp. & T.
Galveston	Christopher Lyka	Lykes Bros. SS. Co.
Freeport	Colorado	Funch, Edye & Co.
	Loide SS. Domini	Lloyd Brasileiro
SUNDAY, AUGUST 20		
Manchaster	Daleman	LeBlanc-Parr, Inc.
Houston	Del Norte	Delta SS. Lines
Beaumont	Nabob	Bieh & Co. Inc.
Houston	Yamatoshi Maru	Texas Transp. & T.
Valencia	Amazonas	Amerind Shpg. Corp.
Mobile	Mar Tiro	Texas Transp. & T.
MONDAY, AUGUST 21		
Paramaribo	Gran Rio	Hansen & Tidemann
Kaohsiung	Hai Hsin	Abauza SS. Corp.
Calcutta	Steel Surveyor	States Mar. Isthmian
TUESDAY, AUGUST 22		
Manila	Hongk. Ambur	West Coast Line
Lake Charles	Bieh & Co. Inc.	Bieh & Co. Inc.
Port Saint Joe	Kyomei Maru	Dalton SS. Corp.
Alexandria	Green Port	Central Gulf Lines
WEDNESDAY, AUGUST 23		
Houston	Felix	Funch, Edye & Co.
Tenag	Hongk. Calm	Kerr SS. Co. Inc.
Tampa	Mallory Lykes	Lykes Bros. SS. Co.
Houston	Map. de S. Mar	E. S. Binnings, Inc.
Houston	Chetah	Jan C. Uiterwyk Co.
Houston	Mar Negro	Kerr SS. Co. Inc.
THURSDAY, AUGUST 24		
Kobe	Chungking Vico	Gulf Motorships, Inc.
Houston	Australian Gem	Lykes Bros. SS. Co.
Houston	Victor Piani	Lykes Bros. SS. Co.
Houston	Annelise Port	Dalton SS. Corp.
Mobile	Woltersum	Amerind Shpg. Corp.
Santos	Barao do Rio Brai	Lloyd Brasileiro
Houston	Triton	Strachan Shpg. Co.
Galveston	Tillie Lykes	Lykes Bros. SS. Co.
Houston	Del Aires	Delta SS. Lines
Mobile	Zamboanga	Ayers SS. Co., Inc.
FRIDAY, AUGUST 25		
Galveston	Oklahoma	Funch, Edye & Co.
Houston	Cart. de India	E. S. Binnings, Inc.
Houston	Dunstan	Texas Transp. & T.
Kingston	Kirksons	Gulf Shpg. Co.
SATURDAY, AUGUST 26		
Mobile	Kerr SS. Co. Inc.	Kerr SS. Co. Inc.
Galveston	Elizabeth Lykes	Lykes Bros. SS. Co.
Freeport	Almea Lykes	Lykes Bros. SS. Co. I
Mobile	Gulf Trader	Gulf & So. Am. SS. Co.
SUNDAY, AUGUST 27		
Houston	Texas Transp. & T.	Texas Transp. & T.
Houston	Waterman SS. Corp.	Waterman SS. Corp.
Gdynia	Strachan Shpg. Co.	Strachan Shpg. Co.
Houston	Bieh & Co., Inc.	Bieh & Co., Inc.
MONDAY, AUGUST 28		
Galveston	States Mar. Isthmian	States Mar. Isthmian
TUESDAY, AUGUST 29		
Mobile	Funch, Edye & Co.	Funch, Edye & Co.
Brownsville	Hansen & Tidemann	Hansen & Tidemann
Mobile	Lykes Bros. SS. Co.	Lykes Bros. SS. Co.
WEDNESDAY, AUGUST 30		
Galveston	States Mar. Isthmian	States Mar. Isthmian
Galveston	Lykes Bros. SS. Co.	Lykes Bros. SS. Co.
Galveston	Lykes Bros. SS. Co.	Lykes Bros. SS. Co.
Houston	Westfalen	E. S. Binnings, Inc.
Houston	Mar Ego	Kerr SS. Co. Inc.

VESSEL ARRIVALS AT NEW ORLEANS

FROM	VESSEL	DOCK	AGENT
TUESDAY, JULY 12			
Galveston	Mariora Lykes	Poland St.	Lykes Bros. SS. Co.
Coastwise	Esso Florence	Baton Rouge	Humble Oil & Ref.
WEDNESDAY, JULY 13			
Salon	Sira	At Point	States Mar. Isthmian
Lake Charles	Gorredylek	First St.	Texas Transp. & T.
Houston	Gibbes Lykes	Nashville Ave.	Lykes Bros. SS. Co.
Mobile	At Point	Amerind Shpg. Co.	Amerind Shpg. Co.
Port Arthur	Angela	Erato St.	United Fruit Co.
Port Kaiter	Malacca Maru	Robin St.	Kerr SS. Co.
Coastwise	Baumare	Baton Rouge	Kaiser Alum. Corp.
Coastwise	Gulf Service	Ostrica	Gulf Oil Corp.
Coastwise	Omar Express	Baton Rouge	Rogers Terminal
Venice	Tenores	Harmony St.	Strachan Shpg. Co.
Coastwise	Thives	Erato St.	United Fruit Co.

18 and Mobile, sld. June 17	7567
Margib Brovlg. Mar. MS.	3519
North Hills, Sr.	3519
Beaumont, sld. Apr. 20	3519
North Marchionis, Grk. MS.	4992
Galveston, sld. June 18	Aqaba
(Via Mobile, sld. June 29)	
Novelist, Gr. MS.	3217
Corpus C., sld. May 7	Manchester
Lykesville (Via Galveston, sld. May 9)	Houston, sld. May 10
N. Orleans, sld. May 14 and Nassau	
Nueva Esparta, Ven. MS.	2772
Pan. City, sld. June 16	La Goira
Puerto Cabello, Maracaibo	
Guanta and Puerto La Cruz (Via Mobile, sld. June 17, Houston, sld. June 21 and New Orleans, sld. June 24)	
O	
Oakville, Nor. MS.	2885
Houston, sld. June 23	Manila
Hongkong, Kaohsiung, Bangkok, Singapore, Balawan Dail and Diakarta (Via Galveston, sld. June 24, B. Rouge, sld. June 27, New Orleans, sld. June 29, Gulfport and San Francisco)	
Oakwood, Br. MS.	14,351
N. Orleans, sld. June 2	Rotterdam
Ocean Envy, Pak. Str.	4350
Houston, sld. Apr. 4	Karachi
Ocean Mariner, Lib. Str.	4473
Houston, sld. June 17	Calcutta
Ocean Master, Nor. MS.	12801
Beaumont, sld. July 9	
Ocean Regina, Grk. MS.	5332
Houston, sld. Apr. 29	Calcutta
Ocean Sailor, Lib. Str.	4415
Mobile, sld. May 21	Alexandria
Oceanic Tide, Sr.	4935
Oceanic, Mar. MS.	4935
Offier River, Grk. MS.	4860
Houston, sld. May 11	Tema
Takoradi, Apapa and Port Harcourt (Via Beaumont, sld. May 13)	
Oklahoma, Dan. MS.	1446
Brownsville, sld. May 23	London
(Via Houston, sld. May 26, New Orleans, sld. May 29 and Mobile, sld. May 31)	
Ojai, Dan. MS.	2099
Houston, sld. June 30	Tampico
Oga, Sr.	4614
Tampa, sld. Dec. 27	
Olga, Grk. Str.	4380
Corpus C., sld. Mar. 26	Marmagosa
Olin, Lib. MS.	8835
Burnside, Ar. July 8	Palmirio
Olivebank, Br. MS.	5142
Corpus C., sld. May 11	Auckland
N. Orleans, sld. May 23	Naples
(Via Tampa, sld. May 25)	
Martha Anne Pan MS.	270
Mobile, sld. July 9	Big Creek
Martha, Grk. MS.	2772
Tampa, sld. June 28	Boca Grande
Marina, Grk. MS.	6087
N. Orleans, sld. June 25	Barcelona
Beaumont, sld. July 1	695
Nassimo Primo, Ital. MS.	10101
Tampa, sld. June 22	Contracour
Marina, Lib. MS.	454
Batof, Grk. MS.	2325
Mobile, sld. June 6	Guayquil
San Juan, Callao, Arica, Iquique, Topocilla, Antofagasta, Chetah, Coquimbo, Valparaiso, Talcahuano, San Vicente and San Antonio (Via Lake Charles, sld. June 8, Freeport, sld. June 9, Houston, sld. June 10, Port Arthur, sld. June 11, New Orleans, sld. June 15 and Gulfport, sld. June 29)	
Esmeralda, Br. MS.	2667
Tampa, sld. June 2	St. Johns
Mayfair, Br. MS.	2577
Mazal, Br. MS.	2577
Tampa, sld. May 4	Marselles
El Aviv, Haifa, Barcelona, Pirous, Ashdod, Cyprus Island (Via Mobile, sld. May 5, Vera Cruz, sld. May 9, Tampico, sld. May 10; Houston, sld. May 16 and New Orleans, sld. May 23)	
McKinney Marak, Dan. MS.	9830
Tampa, sld. Apr. 11	Nilgita
Beaumont, Lib. MS.	10468
Malshun Maru, Jap. MS.	5509
Tampa, sld. Apr. 16	Yokohama
Kobe and Tokyo (Via B. Rouge, sld. Apr. 21, New Orleans, sld. Apr. 22, Lake Charles, sld. Apr. 23, Houston, sld. Apr. 26 and Corinto)	
Mamon, Neth. MS.	1881
Mobile, sld. June 10	Maracaibo
Diakarta, Semarang, Saigon and Surabaya (Via Pascagoula, sld. June 11, Gulfport, sld. Mar. 15, New Orleans, sld. Mar. 16 and Galveston, sld. Mar. 23)	

Richard, Lib. Str.	1260
Mobile, sld. June 4	Miragone
Kingvry, Nor. MS.	5349
B. Rouge, sld. June 29	Yokohama
Rio Barin, Lib. Str.	4803
Baton Rouge, sld. July 17	
(Via Mobile, sld. July 8)	
Rio Barin, Arq. MS.	4196
Houston, sld. June 16	Buenos Aires
Via New Orleans, sld. June 23	
Rio Caroni, Lib. Str.	6721
B. Rouge, sld. June 4	Pto. Ordaz
Rio Guayay, Ecud. MS.	2123
Galveston, Ar. Mar. 21	
(Renamed Galveston Lumberman)	
Rio Hoggens, Cal. MS.	2123
Rio Mar, Lib. MS.	10,812
New Orleans, Ar. July 7	
Rio Manomo, Lib. Str.	4903
Mobile, sld. May 28	Pto. Ordaz
Risa Paus, Neth. MS.	637
Tampa, sld. Apr. 16	Pto. Bolivar
Rio Barin, Arq. MS.	12854
Road Jarl, Nor. MS.	12854
N. O., sld. June 28	Rocky Point
Robert Marak, Dan. MS.	2754
Houston, sld. May 16	Lavan Island
and Kuwait and Khoramshahr (Via New York)	
Roga, Grk. MS.	295
New Orleans, sld. June 28	Turbo
Roma, Nic. MS.	325
Tampa, sld. July 7	Miami
Romandia, Swiss. MS.	16,055
N. Orleans, sld. July 4	Rotterdam
Ronaldina, Peru. MS.	1142
N. Orleans, sld. June 27	Cristobal
P. Pimentel, Salaverry, Chimbote, Callao, Matari and Ilo (Via Beaumont, sld. June 30 and Houston, sld. July 1)	
Rosewood, Br. MS.	6061
Houston, Ar. July 9	
Mobile, sld. July 9	4581
Rowanbank, Br. MS.	4949
Houston, sld. June 21	Brisbane
and Sydney, Melbourne, Adelaide and Port Lincoln (Via Galveston, sld. June 22 and New Orleans, sld. June 25)	
Roy, Grk. MS.	4149
Port Sulohur, sld. May 7	Durban
Yu-Yung, Chin. MS.	6594
New Orleans, sld. May 31	Pusan
Yokohama, Nagoya, Kobe, Keelung, Hongkong and Kaohsiung (Via Houston, sld. June 4, Galveston, sld. June 7, Houston, sld. June 8, Cristobal and Los Angeles)	
Rubens, Belg. MS.	6131
N. O., sld. May 10	St. Vincent
and Madrid, Roma, Luanda and Lobito (Via Galveston, sld. May 12, Houston, sld. May 14, Galveston, sld. May 17, Lake Charles, sld. May 18, Philadelphia and Kingston)	
Rudgert, Vinnen, Ger. MS.	1098
Corpus C., sld. July 2	Port St. Joe
Ruhr, Grk. Lib. MS.	4663
Mobile, sld. May 3	Pto. Ordaz
Russell, Lib. Str.	4464
(Renamed U. S. Red River)	
Ruth Lykes, Sr.	660

RABIAN GULF-RED SEA PORTS-			
Albania	Albania	Albania	Albania
Algeria	Algeria	Algeria	Algeria
Angola	Angola	Angola	Angola
Argentina	Argentina	Argentina	Argentina
Armenia	Armenia	Armenia	Armenia
Australia	Australia	Australia	Australia
Austria	Austria	Austria	Austria
Bahamas	Bahamas	Bahamas	Bahamas
Bahrain	Bahrain	Bahrain	Bahrain
Bangladesh	Bangladesh	Bangladesh	Bangladesh
Barbados	Barbados	Barbados	Barbados
Belarus	Belarus	Belarus	Belarus
Belgium	Belgium	Belgium	Belgium
Belize	Belize	Belize	Belize
Benin	Benin	Benin	Benin
Bhutan	Bhutan	Bhutan	Bhutan
Bolivia	Bolivia	Bolivia	Bolivia
Bosnia and Herzegovina	Bosnia and Herzegovina	Bosnia and Herzegovina	Bosnia and Herzegovina
Botswana	Botswana	Botswana	Botswana
Brazil	Brazil	Brazil	Brazil
Bulgaria	Bulgaria	Bulgaria	Bulgaria
Burkina Faso	Burkina Faso	Burkina Faso	Burkina Faso
Burundi	Burundi	Burundi	Burundi
Cambodia	Cambodia	Cambodia	Cambodia
Cameroon	Cameroon	Cameroon	Cameroon
Canada	Canada	Canada	Canada
Cape Verde	Cape Verde	Cape Verde	Cape Verde
Cayman Islands	Cayman Islands	Cayman Islands	Cayman Islands
Czech Republic	Czech Republic	Czech Republic	Czech Republic
Dominican Republic	Dominican Republic	Dominican Republic	Dominican Republic
Dominica	Dominica	Dominica	Dominica
DRC	DRC	DRC	DRC
Ecuador	Ecuador	Ecuador	Ecuador
Egypt	Egypt	Egypt	Egypt
El Salvador	El Salvador	El Salvador	El Salvador
Equatorial Guinea	Equatorial Guinea	Equatorial Guinea	Equatorial Guinea
Eritrea	Eritrea	Eritrea	Eritrea
Estonia	Estonia	Estonia	Estonia
Ethiopia	Ethiopia	Ethiopia	Ethiopia
Fiji	Fiji	Fiji	Fiji
Finland	Finland	Finland	Finland
France	France	France	France
Gabon	Gabon	Gabon	Gabon
Gambia	Gambia	Gambia	Gambia
Germany	Germany	Germany	Germany
Ghana	Ghana	Ghana	Ghana
Greece	Greece	Greece	Greece
Guatemala	Guatemala	Guatemala	Guatemala
Guinea	Guinea	Guinea	Guinea
Guinea-Bissau	Guinea-Bissau	Guinea-Bissau	Guinea-Bissau
Haiti	Haiti	Haiti	Haiti
Honduras	Honduras	Honduras	Honduras
Hungary	Hungary	Hungary	Hungary
Iceland	Iceland	Iceland	Iceland
India	India	India	India
Indonesia	Indonesia	Indonesia	Indonesia
Iran	Iran	Iran	Iran
Iraq	Iraq	Iraq	Iraq
Ireland	Ireland	Ireland	Ireland
Israel	Israel	Israel	Israel
Italy	Italy	Italy	Italy
Jamaica	Jamaica	Jamaica	Jamaica
Japan	Japan	Japan	Japan
Jordan	Jordan	Jordan	Jordan
Kazakhstan	Kazakhstan	Kazakhstan	Kazakhstan
Kenya	Kenya	Kenya	Kenya
Korea	Korea	Korea	Korea
Kosovo	Kosovo	Kosovo	Kosovo
Kuwait	Kuwait	Kuwait	Kuwait
Kyrgyzstan	Kyrgyzstan	Kyrgyzstan	Kyrgyzstan
Laos	Laos	Laos	Laos
Latvia	Latvia	Latvia	Latvia
Lebanon	Lebanon	Lebanon	Lebanon
Lesotho	Lesotho	Lesotho	Lesotho
Liberia	Liberia	Liberia	Liberia
Libya	Libya	Libya	Libya
Lithuania	Lithuania	Lithuania	Lithuania
Luxembourg	Luxembourg	Luxembourg	Luxembourg
Macao	Macao	Macao	Macao
Macedonia	Macedonia	Macedonia	Macedonia
Madagascar	Madagascar	Madagascar	Madagascar
Malawi	Malawi	Malawi	Malawi
Malaysia	Malaysia	Malaysia	Malaysia
Maldives	Maldives	Maldives	Maldives
Mali	Mali	Mali	Mali
Malta	Malta	Malta	Malta
Marshall Islands	Marshall Islands	Marshall Islands	Marshall Islands
Martinique	Martinique	Martinique	Martinique
Mauritania	Mauritania	Mauritania	Mauritania
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Mexico	Mexico	Mexico	Mexico
Moldova	Moldova	Moldova	Moldova
Monaco	Monaco	Monaco	Monaco
Mongolia	Mongolia	Mongolia	Mongolia
Montenegro	Montenegro	Montenegro	Montenegro
Morocco	Morocco	Morocco	Morocco
Mozambique	Mozambique	Mozambique	Mozambique
Myanmar	Myanmar	Myanmar	Myanmar
Nicaragua	Nicaragua	Nicaragua	Nicaragua
Niger	Niger	Niger	Niger
Nigeria	Nigeria	Nigeria	Nigeria
Norway	Norway	Norway	Norway
Oman	Oman	Oman	Oman
Pakistan	Pakistan	Pakistan	Pakistan
Panama	Panama	Panama	Panama

FOREIGN CONSULS AT HOUSTON

AUSTRALIA and NEW ZEALAND

—AUSTRALIA and NEW ZEALAND—

HAMBURG—(Vis) Beaumont, 14, 10, 18, M. G. 14.

RESPONDENT'S EXHIBIT NO. 2

**Hellenic Lines Limited
Piraeus-Greece
39 Broadway
New York, N. Y., 10006**

**London Agents:
The Fenton Steamship Co., Ltd.
Bevis Marks House
Bevis Marks
London, E.C.3**

**Cables: "ELLINIKI-New York"
Code: The New Boe Code
Telephone: Digby 4-3334**

Agents at All Ports in the World

In reply please quote:

LWL: ma

November 4, 1963

**Mr. Robert W. O'Connor
O'Connor and Company
P. O. Box 8375
Mobile, Alabama**

Dear Mr. O'Connor:

As Mr. Low has undoubtedly told you, we have received tacit approval from the Gulf/Mediterranean Freight Conference to treat with you on agency representation from Mobile to Mediterranean destinations.

It is understood that should there finally be a conflict of interests with you as agents for the Yugoslav Line, this can be the subject of future discussion. At any rate, we are perfectly free to appoint you as our representative to the Red Sea, Persian Gulf, India, Pakistan, Ceylon and Rangoon.

Accordingly, we list below our usual terms and conditions covering U. S. A. agents and, upon your concurrence, will proceed with the formal Agency Agreement. It is our

intention to have the agreement become effective with the berthing of our M/S HELLENIC SPIRIT and M/S HELLENIC HERO which will be loading at Mobile for Chittagong within November.

Terms and Conditions

1. $1\frac{1}{4}\%$ on the gross inward manifested general cargo on our vessels that discharge at Mobile or on cargo that is transhipped to Mobile.
2. $1\frac{1}{4}\%$ on the gross outward manifested general cargo on our vessels that load at Mobile.
3. An additional compensation of $1\frac{1}{4}\%$ on the gross outward or inward manifested freight on bookings consummated by you or booked as a result of information furnished by you for a total of $2\frac{1}{2}\%$.
4. $1\frac{1}{4}\%$ on bulk parcels or cargos that are booked by you.
5. \$250.00 for parcels of bulk cargo such as wheat and soforth (but excluding bulk oils) loaded on our vessels.
6. \$350.00 for "Blocks" of cargo such as bagged flour, wheat, steel items, and soforth, loaded on our vessels.
7. \$200.00 for handling a vessel under a Charter Party.
8. \$250.00 on full cargos of grain or fertilizers.
9. \$150.00 for vessels discharging bulk parcels of ore and soforth.
10. All communications such as telephone, teletype and telegrams sent to our New Orleans or New York offices are to be transmitted on a collect basis.

Please let us know if these conditions are acceptable to you.

Very truly yours

Hellenic Lines Limited

/s/ L. W. Lee

L. W. Lee

Traffic Manager

LWL:ma

RESPONDENT'S EXHIBIT NO. 3

In the United States District Court for the
Eastern District of Virginia
Newport News Division

SOTERIOS HIOTIS,

against

Libellant,

GREEK S/S "HELLENIC GLORY," etc., HEL-
LENIC LINES, LTD. and TRANSPACIFIC
CARRIERS CORP.,

Respondent.

Admiralty
No. 724

MICHEL KL, MIHALARIOS,

against

Libellant,

GREEK S/S GRIGORIOS C. III, etc., et als.,
Respondents.

Admiralty
No. 739

GEORGE TASSOU,

against

Libellant,

GREEK S/S HELLENIC TORCH, et al.,
Respondents.

Admiralty
No. 740

PANAYIOTE DEM ALEXOPOULOS,

against

Libellant,

GREEK S/S HELLENIC LAUREL, etc., et al.,
Respondents.

742

THEOKLITOS SYMEONIDIS,

against

Libellant,

GREEK S/S HELLENIC HERO,

Respondent.

756

39 Broadway,
New York, New York

January 10, 1964—2:30 P. M.

Discovery deposition taken by Libellants of the Re-
spondents at the offices of the Hellenic Lines, 39 Broad-

way, New York, New York, on January 10, 1964, at 2:30 P.M., pursuant to order of the court. The testimony of the witnesses, except where otherwise noted, will apply to all four cases presently pending in the United States District Court for the Eastern District of Virginia, bearing Admiralty Numbers 724, 739, 740, and 742.

Appearances:

John P. Cassapoglou, Esq., 152 West 42nd Street, New York, New York, Attorney for the Libelants. By: Burt M. Morewitz, Esq., of Counsel, Citizens Bank Building, Newport News, Virginia.

Jett, Sykes & Berkeley, Esqs., 701 Citizens Bank Building, Norfolk, Virginia, Attorneys for Respondents. By: Carter B. S. Furr, Esq., of Counsel.

Zack, Petrie, Shenemar & Reid, Esqs., 52 Broadway, New York, New York, Attorneys for Hellenic Lines, Ltd. By: Edwin K. Reid, Esq., of Counsel.

P. G. Callimanopulos, residing in the United States in Greenwich, Connecticut, and at Akti Miaoli, Piraeus, Greece, after having been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

Direct Examination

By Mr. Morewitz

Mr. Morewitz: This deposition is being taken pursuant to Court order in four of these cases and is being taken pursuant to agreement with counsel in the case of Theoklitos Symeonidis against the Greek S/S Hellenic Hero.

The Court order called for this deposition to begin at ten o'clock this morning and was continued until two o'clock this afternoon for the convenience of Hellenic Lines, Limited, and it is now two-thirty that we are commencing.

Mr. Reid: I believe Mr. Callimanopulos has a statement to make.

Mr. Morewitz: Very well; we will listen to the statement.

The Witness: For the purposes of these cases only, it is admitted that the beneficial interest of better than ninety-five per cent of the stock of Hellenic Lines, Limited, Transpacific Carriers Corporation and Universal Cargo Carriers, Inc. is owned by me and my family, I being a citizen of Greece and now being in the United States.

Q. Mr. Callimanopulos, you state that this beneficial interest in this stock is owned by you and your family. Where are the members of the family presently located to which you refer? A. Some here; some in Greece.

Q. How much of this 95% is owned by those members of your family who are here in the United States at the present time? A. Very little. That is a verbal promise.

Q. How much of this 95% beneficial interest belongs to you yourself? A. By far the major part.

Q. And you yourself have been a resident of the United States since 1945; is that correct? A. Not a resident. I was then a treaty trader.

Q. You came to the United States in 1945? A. Right.

Q. And you have been in the United States ever since, except for occasional trips abroad? A. Yes; in and out.

Q. When did you become a resident alien in the United States? A. I think in 1951 or 1952.

Q. Now, these trips that you have made outside of the United States, they have never been more than two or three weeks at a time? A. Sometimes longer.

Q. What was the longest trip, to the best of your recollection? A. Two months.

Q. Two months? A. Yes.

Q. How many times a year did you make these trips since you first came here? A. Occasionally, several times a year.

Q. Sometimes no times—would that be it—it would fluctuate? A. Never a year passed without going abroad.

Q. You went abroad at least once a year and some years you went abroad several times? A. Several times.

Q. Now, since 1948 you have resided at Meadow Drive, Greenwich, Connecticut; is that correct? A. Right.

Q. You are the general manager of Hellenic Lines, Limited, I believe? A. Yes.

Q. You are also one of the directors? A. Yes, sir.

Q. Your son, Mr. G. P. Callimanopulos is also one of the directors? A. Yes; but he has ceased to have any active part in the company. He is on his own.

Q. He became a director of Hellenic Lines in 1956; is that correct? A. I don't know.

Q. Somewhere in that area—would that be approximately correct? A. Maybe; I don't remember; I can't tell you.

Q. You have corporate records that show who the directors are? A. Yes; they are not here.

Q. But there are certain records that show who the directors are and when they became directors? A. Certainly.

Q. Mr. G. P. Callimanopulos is still a director of the corporation? A. I think he omitted to resign, although I repeat he is already on his own and has had nothing to do with the company for quite some time past.

Q. Did the stockholders elect a director in place of Mr. G. P. Callimanopulos on the board? A. No; I told you I think he has omitted to put in a resignation.

Q. And the stockholders have omitted to vote a replacement? A. Right.

Q. He is presently a resident of the United States; is that correct? A. Yes, sir.

Q. He lives in New York City? A. Yes, sir.

Q. Is he married? A. Yes, sir.

Q. He has children? A. Yes, sir.

Q. They are citizens of the United States? A. No.

Q. They live in the United States though? A. Yes. But I tell you he eventually goes out of the country.

Q. But at the moment he is in the United States? A. He is in the United States now. He came back a week ago.

Q. But he initially came to the United States about a year after you first came here; is that correct? A. Correct.

Q. And he lived with you a considerable period of time in Greenwich, Connecticut, until he got married? A. Or in school. Before that he was abroad. When he came out of school, he went abroad and stayed abroad and that is where he was married.

Q. I see. How long has he lived in New York City? A. Since when?

Q. That is the question. Since when has your son lived in New York City? A. I think it must be about two or three years.

Q. When did he cease to live at Greenwich, Connecticut? A. Immediately when he came out of school, he went abroad.

Q. Do you know what year that was? A. 1956 perhaps.

Q. And then he came back and became associated with this company; is that correct? A. Yes; then he went again abroad.

Q. During the time he was associated with this company Hellenic Lines, where did he live? A. In New York.

Q. During the time that he was associated with Hellenic Lines, Limited; what was the longest period of time that

he was out of the United States in any one year? A. I couldn't tell you; maybe a year or more at a time.

Q. At a time? A. Yes.

Q. Now, you yourself have resided in Greenwich, Connecticut, since 1948; is that correct? A. Yes, sir.

Q. Do you own your house there? A. No.

Q. Your son's immigration status in the United States is that of a resident alien; is that correct? A. I think so.

Q. Does he have any beneficial interest in the stock of these three corporations? A. No; not as yet.

Q. You mean you may at some later time, but as yet—as of, the present time, you haven't done it; is that correct? A. That may be the case.

Q. Now, besides you and your son, who are the other directors of Hellenic Lines, Limited? A. Mr. Takis Zakas, T. Tagaris, Theodore Paingos, P. Papadopoulos, L. Antonopoulos and Frank Slater.

Q. Where does Mr. Frank Slater live? A. Here.

Q. In New York City? A. Somewhere in Long Island.

Q. He is an American citizen? A. Yes; he was recently made a director of the company.

Q. I see, sir. Mr. Takis Zakas and Mr. T. Tagaris—where do they live? A. All the others live in Greece with the exception of Mr. Tagaris who lives in London.

Q. He has lived in London continuously for some considerable period of time, has he not? A. Yes.

Q. At least ten or fifteen years would you say, sir; maybe more? A. In London?

Q. In England? A. No; I don't think so; at least a minimum of ten years.

Q. A minimum of how many years? A. No; a minimum of seven years.

Q. Did Mr. Tagaris or any other of these directors come to the United States in the last five or six years?
A. No.

Q. Who are the officers of Hellenic Lines, Limited now?
A. Where? I mentioned them.

Q. Those are the directors. Who is the president; who is the vice president; the secretary—what offices do they hold?
A. The president is Mr. Takis Zakas; Mr. Pagous is managing director; the others are just directors.

Q. What is Mr. Frank Slater's title?
A. Director; but I tell you it has been an honorary appointment; he has never attended any meeting of the company; he has never had any interference with the internal affairs of the company; he was hired recently here and it has been an honorary appointment.

Q. What is his function in the company?
A. He is working in the company, generally.

Q. What department of the company does he work in?
A. General cargo services.

Q. You have had—Hellenic Lines has had, an office, an office at 39 Broadway since 1948; that is correct, isn't it?
A. No; I would say since 1950.

Q. But you did business in the United States before that using some other company as your agent?
A. Yes, in that company we had a small room.

Q. But you now maintain offices at 39 Broadway?
A. Yes, sir.

Q. Under a long-term lease?
A. That is correct.

Q. And that lease will terminate when, sir?
A. It was made for ten years, with the option to sub-let the premises because without this long lease the owners of the building would not make the alterations we wanted.

Q. When does that lease expire?
A. Sometime in '72.

Q. 1972?
A. Yes.

Q. Hellenic Lines also owns a pier at the foot of 57th Street in Brooklyn? A. Yes, sir.

Q. And in New York, you have how many employees in your office, would you say 100? A. Very close.

Q. And that is approximately the same number of employees you have in the Piraeus office; that is correct, isn't it? A. Yes; a little less.

Q. You have a little less in the Piraeus office? A. Yes.

Q. How many do you have over there? A. Seventy or seventy-five.

Q. Seventy? A. Seventy-five.

Q. And in New York, Hellenic Lines directly employs a large number of American stevedores; that is correct, isn't it? A. You mean longshoremen?

Q. Longshoremen? A. Yes.

Mr. Hennessy: Mr. Morewitz, Mr. Callimanopulos indicated that they were American stevedores. We don't know whether they are or not.

Mr. Morewitz: At this point, I object to Mr. Hennessy, who has declined to say whether or not he is a member of the bar, coaching this witness or interfering further with the testimony of this witness who is presently testifying under oath; and at the moment Mr. Hennessy is not under oath.

Mr. Furr: Mr. Hennessy is not testifying; Mr. Morewitz; he only supplied Mr. Callimanopulos with some information. That statement was directed to Mr. Callimanopulos.

Mr. Morewitz: That is exactly my point, Mr. Furr. Mr. Callimanopulos is a witness being interrogated; he has counsel here. I have already indicated that I think it is improper. The Court has disagreed with me on that, but the Court hasn't said that Mr. Hennessy is counsel and can interrupt in this examination; and I object to it.

Q. In any event, sir, you employ in New York approximately 100 longshoremen would you say? A. You mean the company, not I?

Q. The company? A. Yes; very close.

Q. And the company has an office in New Orleans, has it not? A. Yes, sir.

Q. And it has had that office how long? A. Five or six years.

Q. And that office also has a long-term lease; is that correct, sir? A. That, I don't know.

Q. How many employees would you say are in the New Orleans office? A. About ten.

Q. Now, in each of the years beginning with 1959 until the present, how many vessels did Hellenic Lines itself own in its own name? A. Now, or—

Q. I would like to know each of those five years, approximately? A. Which ones?

Q. Start with 1959. A. Every year?

Q. I would like to know for every year—if it varies; if it is approximately the same year? A. I can tell you the present number but I can't tell you when they acquired each vessel.

Q. How many do you have at present that are owned by Hellenic Lines Limited itself? A. Fourteen.

Q. How many vessels are owned by Transpacific Carriers Corporation? A. I have to refresh my recollection. I can't answer it; I must look at it.

Q. You have records here that do indicate that; do you not? A. I can find them.

Q. Would you do so, sir?

Mr. Hennessy: (to witness) Shall I get the record.

The Witness: Ask Eddie.

Q. Now, the operations of Hellenic Lines are divided into three categories—United States north of Hatteras to the Mediterranean; United States Gulf to the Red Sea; and United States Gulf to the Indian Service; is that correct? A. More or less.

Q. I would like to get what is correct? will you tell me how the operations are divided? A. The operations for the United States—Mediterranean north of Hatteras—Mediterranean—and two more services; one to the Persian Gulf and one to India and Pakistan—you mean operations in the United States?

Q. Yes, sir; now at this point I am just referring to United States operations. We will get to the others in a second.

Q. Now, the decision to enter each of these trades was made by you as general manager; is that correct? A. No; by the company in concert with me.

Q. How did the decisions work out? A. We started first, I think, service only to the Mediterranean—after the war, which service we had also during the war—then I saw possibilities of extending elsewhere. I made a suggestion to the company and they accepted and the rest was to the Persian Gulf and finally to India and Pakistan. The vessels we have are sixteen.

Q. There are sixteen vessels owned by the Hellenic Lines at the present time; is that correct? A. Yes, sir.

Q. How many are owned by Transpacific Carriers Corporation at the present time.

Mr. Furr: Let the record show that the witness is referring to some records now. A. Six.

Q. And how many are owned by Universal Cargo Carriers Incorporated? A. Seven.

Q. How many are owned jointly by Universal Cargo Carriers and Transpacific Carriers Corporation? A. I think only one out of the ones I mentioned above.

Q. How many are owned by any other corporation with which you have a connection other than Hellenic Lines?

A. They are owned by 40% Hellenic, I think, and 60% Transpacific, out of this total.

Q. Are there any other vessels owned by any corporations with which you have a connection? A. No.

Q. Now, these vessels you have been referring to, are they all the vessels owned by these three corporations or are they the vessels originating from the service—from the United States? A. These are the vessels owned by them.

Q. This includes other services then? A. Oh, yes.

Q. Of these vessels that you have just enumerated, how many are used in service originating in the United States and how many are used in other services? A. Nineteen from the United States and ten from Greece; although also four out of the nineteen may be considered to originate from Greece because that is from where their trips begin when coming to the United States.

Q. Now, will you give me the names of these four vessels, sir? A. Hollandia, Turkia, Hellas, Athinai.

Q. Who owns these four vessels—which corporation? A. Two of them are owned by Hellenic.

Q. Which two, sir? A. The Hollandia and Turkia.

Q. Who owns the other two? A. Transpacific owns the Athinai and Hellas.

Q. Now, the other fifteen vessels that are operated from the United States, will you give me their names, please, and their owners? A. Gregorios C. III, Hellenic Beach, Hellenic Sky, Hellenic Sailor, Hellenic Splendor, Hellenic Star, Hellenic Wave, Hellenic Glory, Hellenic Spirit, Hellenic Torch, Hellenic Leader, Hellenic Destiny, Hellenic Hero, Hellenic Laurel, Hellenic Pioneer.

Mr. Reid: (to witness) You said that in connection with the question that was framed in this way to you by Mr. Morewitz that these fifteen—

Mr. Morewitz (interposing) Just a second. Mr. Reid is attempting now through his direct examination type of examination of this witness—he is entitled to do that after I get through with my examination; he is not entitled to examine this witness at this time, and I strenuously object to Mr. Reid's either examining this witness at this time or suggesting possible answers to this witness. This witness is being interrogated and not Mr. Reid.

Q. May we have the owners of these fifteen vessels?

A. The first seven are owned by Hellenic Lines; the next four by Transpacific Carriers; and the last four by Universal.

Q. Now, to revert to this decision as to entering each of these trades from the United States—

Mr. Reid: I object to the form of the question.

Q. (continuing) You were telling us before you initially had a trade United States north of Hatteras to the Mediterranean which had been in existence sometime during World War II and that at the conclusion of the War—this was the trade that you had here and that sometime later you saw the possibilities of expanding this trade and that the trade was thereafter expanded first United States Gulf to the Red Sea and then later United States to India; and you were telling us how this expansion took place when these statistics on these vessels were brought in (a document having been brought into the room). Will you continue to tell us how this expansion came about?

Mr. Reid: Just a minute. I object to the form of the question. I object to your erroneous summation of the witness' testimony; and I instruct the witness not to answer. You can certainly ask a simple question and it will be answered.

Mr. Morewitz: (to reporter) Will you read the question to the witness and see if the witness refuses to answer in view of this Court order.

Mr. Reid: I am telling the witness not to answer.

Mr. Morewitz: The witness is the one who faces the consequences, Mr. Reid, and not you; unless you want to come to Court and you can face the consequences. (To reporter) Will you read the last question to the witness, please.

Mr. Reid: I have objected to the form of the question, and also on the ground that it is not an accurate summary of his testimony that you gave. The record speaks for itself, not what Mr. Morewitz wants to interpret the record to say, and I instruct the witness not to answer; so, we will let the record speak for itself.

Q. Do you understand the question, Mr. Witness? A. Yes. You have the answer from Mr. Reid.

Q. You also understand that you face a possibility of having the pleadings of these defendant corporations stricken because of your not answering these questions.

Mr. Reid: Please don't instruct our client as to what the law is; we will instruct him as to what the law is, Mr. Morewitz.

Mr. Morewitz: You seem to be instructing him as to what the facts are, Mr. Reid.

Q. Do you intend to answer this question, Mr. Witness, or do you intend to decline to answer? A. I am following the advice of my counsel. I will confine myself to what I have previously stated.

Mr. Morewitz: And at this point, we move the Court, when this matter is presented, to strike the pleadings of these three respondent corporations because of the refusal of its managing agent to answer questions on dis-

covery depositions taken pursuant to Order of the Court, after the previous refusal of these respondent corporations to produce this witness for examination in November and December. However, we will continue to struggle on as best we can with what other questions this witness might care to answer.

Mr. Furr: Mr. Morewitz, you can make any motions later. I suggest we not waste time with the motion now; you can make your motions later.

Mr. Morewitz: Just so that no one will be under any misapprehension as to what I intend to do—I have made my statement and we will now proceed.

Q. Now, when did you first conceive of the idea that it might be profitable to have a trade from the United States Gulf to the Red Sea? Where were you at that time?
A. Here.

Q. In the United States? A. Yes.

Q. And when did you first conceive the idea that it might be profitable to have a trade from the United States to India; where were you at that time? A. Here.

Q. In the United States, sir? A. Yes.

Q. And each time these decisions were made, you had the major beneficial interest in the stock of Hellenic Lines; is that correct? A. Yes; not perhaps to the same extent.

Q. But it was still the major beneficial interest? A. Yes.

Q. Was it a majority beneficial interest? A. Yes.

Q. So the key decisions that you made were bound to be the decisions that the company would follow; isn't that correct?

Mr. Reid: I object to the form of the question. It is calling for a legal conclusion and opinion of the witness; and I instruct him not to answer.

Q. I ask the witness whether he cares to answer or wishes to decline to answer? A. I don't think the question calls for an answer.

Q. Do you understand the question, sir? A. Yes.

Mr. Morewitz: I will repeat my motion for default; and we will proceed.

Q. Now, when these decisions were formally ratified by Hellenic Lines——

Mr. Reid: I object to the form of the question.

Q. Let me ask you first, were they ever formally ratified by Hellenic Lines?

Mr. Reid: I object to the form of the question. You know better than to ask him these type of questions, Mr. Morewitz.

Mr. Morewitz: I am entitled to ask him leading questions.

Mr. Furr: But there is no evidence that any ratification took place.

Mr. Reid: I am objecting to the question as calling for a legal conclusion. This is a lay witness; he is not a lawyer. This is lawyer talk; you know it is lawyer talk.

Mr. Morewitz: Reading from the transcript, I think he does a lot better than some lawyers I know.

Mr. Reid: We were going along pretty well when you were asking proper questions; I don't know why you are getting off on this tangent, except to try to make some record here. If you go along and be a lawyer, like you are a lawyer, we will get somewhere.

Q. Mr. Callimanopulos, after you first conceived that this trade—United States Gulf to the Red Sea might be profitable, what did you do with regard to implementing

that idea? A. I think I was in Greece. I went to Greece and set out my views which were eventually accepted.

Q. Was there a formal meeting of the board of directors at that time? A. I don't remember.

Q. Do you keep minutes of the board of directors when you do have meetings? A. Yes; but while I'm there nothing is kept in an official way.

Q. In other words, essentially what happened is that you said "I think this is a good idea" and everybody else said "We think so too?" A. Yes, sir; I expressed my views and they accepted my suggestions.

Q. And the suggestion came from the man who had the major beneficial interest in the corporation; is that correct? A. That doesn't mean anything; in a corporation there are other interests.

Q. Whether that means anything or not—that was a fact, was it not? A. That doesn't call for an answer.

Q. Now, who else was present at that time? A. Most of the directors of the company.

Q. Was Mr. G. P. Callimanopulos? A. No.

Q. Was Mr. Tagaris present? A. He may have been there.

Q. Was Mr. Antonopulos present? A. Yes.

Q. Now, besides the services from the United States, you also have one or more other services; is that correct? A. Right.

Q. What are those services that Hellenic Lines operates? A. The Hellenic Lines—yes—one is from the northern part of Europe to the northern part of the Mediterranean and the Black Sea; and the second one, again from the northern part of Europe to the south part of the Mediterranean Sea; and the third service from the same area to the Red Sea which has been discontinued.

Q. So, you only have two services; is that correct? A. Right now, yes.

Q. Are these two services—the operations are directed from London, is that correct? A. No; from Piraeus.

Q. What function does Mr. Tagaris have in England? A. He is supervising the operations of those services on that side of the world.

Q. He supervises the services in Europe; is that right? A. Yes.

Q. Now, besides the vessels that we have previously enumerated that are owned by Hellenic Lines, Universal Cargo Carriers and Transpacific Carriers—Hellenic Lines during the last five years has also operated vessels under other flags; has it not? A. Yes; eventually; chartered.

Q. What other flags were they? A. Any flag.

Q. Principally English and German, weren't they? A. I couldn't tell you; any flag.

Q. Any flag that was available? A. Yes; it was more or less a requirement—if a vessel of ours was late and couldn't make a certain date, we could go out and take temporarily another vessel.

Q. How many times would this occur a year in each of the last five years would you say? A. I couldn't tell you. Right now, we have none.

Q. But there are records that show how often this happened; are there not? A. Yes; I can dig them out. Right now, we have none.

Q. How about in 1959? A. I couldn't tell you.

Q. 1960? A. I couldn't tell you.

Q. But there are records available that will give that information? A. Oh, yes; that's right.

Q. Are these records here in New York? A. Well, we have records; we know what vessels they are.

Q. I request that you obtain that information, sir, before this deposition is concluded. (pause) Now, on the vessels that are owned by Hellenic, Transpacific and Uni-

versal, a fairly substantial amount of annual dry docking and maintenance is done in the United States, is it not? A. Not quite.

Q. Would you say that twenty percent of it is done in the United States? A. Our tendency right now is not to do any in the United States.

Q. I understand that; but as a matter of fact over the past five years it has averaged about twenty percent a year hasn't it? A. In the United States?

Q. In the United States? A. Maybe.

Q. You have records that do show whether or not that is correct? A. It is difficult to establish what you say.

Q. Don't you keep records on each vessel? A. You can't possibly establish where each vessel carried out its occasional repairs.

Q. You can establish though where each vessel has its annual dry docking? A. If need be, yes; but I told you that recently we do all that abroad.

Q. In 1960, did you do it all abroad? A. I couldn't tell you. Now, those ships calling in Greece, we do everything in Greece—and now recently we do—for quite some time, we are bound to do repairs abroad.

Q. But there are records available in this office that show that annual dry docking on the nineteen vessels that operate in the United States—where they had their annual dry docking? A. Yes, we can find that.

Q. Now, for the finances handled in regard to freights; where are the freights collected and where are disbursements made? A. Where paid?

Q. There is a pattern on that—you don't run tramp service? A. No.

Q. You run regularly scheduled cargo service? A. Yes.

Q. And as a pattern, I asked where they are paid—not available? A. If it is freight payable abroad, it is very

simply collected abroad. If it is people here, it is collectible here.

Q. During the course of any year, what percentage of freight would you say is collected in the United States and what percentage is collected abroad? A. That isn't easy to answer.

Q. Would you say more than fifty percent of the freight is collected abroad, usually? A. Maybe.

Q. Would you say that more than seventy-five percent of the freight is collected abroad, usually? A. I couldn't tell you. You are asking a question that I have never dealt with before.

Q. Who has charge of the financial arrangements in Hellenic Lines; who supervises the collection of freights and general financial matters? Do you have a comptroller or auditor? A. We have a treasurer—an accountant.

Q. Who is in charge of that—the treasurer? A. The treasurer must know where freights are payable.

Q. Who is the treasurer? A. Mr. Cajzer.

Q. What is his address? A. I couldn't tell you. I must find it for you.

Q. Does he live in the United States or abroad? A. In the United States.

Q. His office is at 39 Broadway where your office is located? A. He is an employee here.

Q. He is a citizen of the United States? A. Yes—presumably; I don't know exactly, but I think that he is.

Q. Now, when was Transpacific Carriers Corporation incorporated, if you remember? A. I don't know.

Q. Would 1956 seem about right? A. Maybe.

Q. There are records maintained that do show where this corporation was incorporated, are there not? A. Yes.

Q. Are those records in New York? A. Yes; I can find out when it was incorporated.

Mr. Furr: I believe we answered that in interrogatories, giving you the exact date.

Q. Now, when Transpacific Carriers Corporation was incorporated, whose idea was it to have this corporation formed? A. It was a general idea as a result of a law that was enacted in Greece for foreign citizens and corporations to own vessels under the Greek flag.

Q. I understand that is permissible. Who conceived the idea that this corporation be incorporated? A. A general practice, I should say.

Q. Not altogether a general practice, is it, sir, when you have a large number of vessels? A. It was a general practice before that date for Greek vessels to be owned by foreign corporations.

Q. But Hellenic Lines is a Greek corporation, is it not? A. Yes.

Q. It has existed for a good many years? A. Yes.

Q. And it owns vessels in its own name? A. Yes.

Q. Flying the Greek flag? A. Yes.

Q. In 1956 someone got the idea that this Panamanian corporation should be formed? A. The Greek government did it.

Q. The Greek government got the idea to form this Panamanian corporation? A. To permit to establish by law for Greek flag citizens to be owned by foreign citizens.

Q. Who decided to form Transpacific Carriers Corporation? A. Because everybody was doing it, we decided to do it.

Q. Do you mean you decided to do it or Mr. Tagaris—who? A. All of us.

Q. And at that time you were in New York, is that right—living in New York or Connecticut? A. I couldn't tell you whether at that time I was right . . .

Q. Now, when you decided to form this corporation—you and your associates—who was employed to draw up the corporation papers; was it a lawyer here in New York or a lawyer elsewhere? A. Here in New York.

Q. Now, this corporation Transpacific Carriers Corporation has a registered office in Panama, but it actually has no office in the sense that Hellenic Lines has an office here in New York? A. No.

Q. No shipping business conducted in Panama? A. No.

Q. Now, when Universal Cargo Carriers was incorporated, did the same situation take place there? A. Yes.

Q. Was it also a New York lawyer in that instance who drew up the corporation papers? A. Yes.

Q. And that corporation likewise has no office in the usual sense of the word. It has a registered office but it does not conduct any business down in Panama? A. Right.

Q. Who are the officers of these two corporations? A. I can't say that in an offhand way.

Mr. Furr: We have given you the officers of Transpacific Carriers and will give you the others.

Q. Do these officers actually have anything to do with the operation of the vessels that are owned by their respective corporations? A. Not exactly.

Q. Are any of these officers residents of the United States? A. I couldn't answer that either.

Q. Do you know what their occupations are? A. No.

Q. Now, there is an agreement, is there not—first, is there an agreement in writing between Transpacific Carriers and Hellenic Lines regarding the operation of those vessels owned by Transpacific Carriers Corporation? A. Yes, sir.

Q. Is there likewise an agreement in writing between Universal Cargo Carriers, Inc. and Hellenic Lines? A. Yes, sir.

Q. Where were those agreements signed? A. In Greece.

Q. By all parties? A. It was signed in Greece and then registered in Panama.

Q. There were no signatures in Panama? A. Yes.

Q. There were signatures in Panama? A. Signed in Panama and in Greece and registered, both in Panama.

Q. Now, do you have in New York either the original or copies of those agreements? A. I think I have both.

Q. Do you have in New York either the original or copies of the articles of incorporation of each of these corporations? A. I think so.

Q. Do you have in New York the minutes of the stockholders and boards of directors of these Panamanian corporations or copies thereof? A. No; I don't think so.

Q. Now, what is the relationship between Hellenic Lines and Fenton Steamship Company? A. None.

Q. No relationship whatsoever? A. You mean corporation—but no financial relationship.

Q. No financial relationship? A. No.

Q. It is not a subsidiary? A. No—(pause) You mean a subsidiary of Hellenic?

Q. Yes? A. No.

Q. However, you are a partner in Fenton Steamship Company? A. Yes.

Q. Mr. Tagaris is a partner in Fenton Steamship Company? A. Yes.

Q. Who has the majority beneficial interest in Fenton Steamship Company?

The Witness: (to his counsel) Do I have to answer this question?

Mr. Furr: Mr. Morewitz, what relevancy has the Fenton Steamship Company in this? They don't come into any of

these cases as far as I know; unless the relevancy is explained, I am going to object.

Mr. Morewitz: This witness has previously testified that Fenton is a subsidiary of Hellenic.

Mr. Furr: That has nothing to do with these cases, Mr. Morewitz, and I object to it.

Mr. Morewitz: Is the witness going to answer or isn't he?

Mr. Reid: I instruct the witness not to answer; there is no relationship of this Fenton Steamship Company to any of these cases.

Q. Will the witness state whether he is going to answer?

A. On the advice of my counsel, no.

Q. What employees does Transpacific Carriers Corporation have other than the three officers—president, vice president and treasurer—any? A. Employees?

Q. Yes, sir? A. I don't know of any.

Q. What employees does Universal Cargo Carriers have other than its three officers? A. I do not know of any.

Q. Now, when the operations of the vessels owned by Transpacific Carriers Corporation result in profits, how are those profits transmitted to Transpacific Carriers Corporation? A. Unfortunately, there have not been any.

Q. The other way around—if there are losses, how are those losses made up—in what manner? A. Brought forward.

Q. They take the form of checks for money? A. No; just brought forward.

Q. Just brought forward. I see. How about in the case of Universal Cargo Carriers Corporation? A. Also they don't have any profits.

Q. In no year since they have been formed; is that correct? A. Right.

Q. Now, as general manager of Hellenic Lines, Limited, you are the principal executive officer of Hellenic Lines?
A. No.

Q. Who is the principal executive officer? A. The president.

Q. Percentagewise, how does your salary compare with the salary of the president; is it more or less? A. I am sorry to say I am not receiving anything.

Q. Does the president have the authority to overrule any decision that you might make? A. It is a matter of a majority of the board of directors.

Q. And the power rests with the board of directors rather than with any one individual officer; is that right?
A. Yes.

Q. Who appoints the board of directors? A. The stockholders.

Q. And you are the principal stockholder ultimately?
A. Yes.

Q. Now, how is the—broadly speaking, the operation of Hellenic Lines in New York organized? You are the general manager, I understand, and under you there are various department heads; is that correct? A. Yes.

Q. What are these departments—the major departments? A. Traffic, Accounting—Traffic divided into inward and outward—Claims, Technical; that is all.

Q. Now, these departments are directly responsible to you as general manager; is that correct? A. Yes; they are referred to me.

Q. Now, is there any duplication of these departments with other departments of Hellenic Lines in any other place in the world? A. Certainly. Each department corresponds with the corresponding department in Greece, direct.

Q. Who is the Traffic Manager of Hellenic Lines, Limited—the over-all traffic manager? A. Where?

Q. New York—the New York traffic manager; who is the principal traffic manager of Hellenic Lines? A. There is one here and—the principal one would be Mr. L. Antonopulos in Greece.

Q. How does the dollar volume of business originating or terminating in the United States of Hellenic Lines and its subsidiaries compare with the dollar volume of business originating or terminating anywhere else in the world percentagewise? Would you say that more than fifty percent of the business of Hellenic Lines and its subsidiaries originates and terminates in the United States, or less than that? A. Less; far less.

Q. Would you say twenty-five percent? A. I couldn't say exactly, but it is less than that because you have one service that has nothing to do with the United States; and then you have India which is one of our main sources of freight.

Q. The question is, the percentage of dollar volume of business originating or terminating in the United States—both? A. That is more than fifty percent I would say; but if you want to know separately about according to the origin of freight—the freight of origin other than the United States is larger than the one of the United States?

Q. More freight originates and terminates in the United States than originates in any other country; is that correct? A. That question is complicated and not clear.

Q. First, more business terminates in the United States than terminates in any other place; is that correct? A. No.

Q. Does Hellenic Lines maintain a statistical record of an origin of its freights? A. Not statistical; no.

Q. Just the general financial records you maintain. This gentleman whom you have previously mentioned—you said he was the treasurer; he is the gentleman who would

have the records pertaining to what freights terminate in the United States? A. Not quite.

Q. Who would have that information? A. The Accounting Department.

Q. The Accounting Department? A. Yes.

Q. Who is in charge of the Accounting Department? A. Mr. Arnold.

Q. He is here at 39 Broadway? A. Yes; he works here.

Q. He is an American citizen as far as you know? A. I don't know.

Q. You have a well-organized system of advertising the services of your corporation. What percent of the advertising dollar that you spend is spent on advertising in the United States as opposed to advertising elsewhere? A. I couldn't tell you.

Q. Would Mr. Arnold be able to tell us that? A. No; because we don't have the accounts from Greece—the particulars of the Greek accounting.

Q. Now, as a ship-owner residing in the United States since 1945, you are generally aware, are you not, of the provisions of 46 U. S. Code, Sections 596-597, pertaining to the payment of wages to seamen on foreign flag vessels in the United States? A. I do not know what you mean by that. What does that refer to?

Mr. Furr: I am going to object to this line of questioning, Mr. Morewitz; it is calling for a legal opinion by the witness, and it is the same type of question that the Court said Mr. Hennessy did not have to answer. I don't think this witness should have to answer legal conclusions here.

Mr. Morewitz: I think this witness is in a different position from Mr. Hennessy.

Q. I will ask the witness whether or not he understands generally that any seaman discharged in the United States

on any flag vessel whatsoever is required under American law to be paid for wages within four days after he is discharged or within 48 hours after cargo is discharged?

A. We never discharged any of our seamen in the United States.

Q. Do you know that that is the American law, sir—whether you do or do not discharge them? A. We never discharged any in the United States, and if any were to be discharged they would have to be paid at the time of discharge at the Greek consulate.

Q. Now, what is the procedure when a seaman on one of the vessels owned or operated by Hellenic Lines or by Transpacific Carriers or Universal Cargo Carriers wants to send an allotment; how is the allotment procedure handled physically? A. The captains give instructions to our Piraeus house to pay the amounts involved.

Q. No correspondence or checks in regard to allotments are handled through the office here in New York, is that correct? A. No, the captains send the list of allotments directly to Piraeus to pay to the men's families directly, and the captains issue orders on our Piraeus house to pay such orders.

Q. Now, if a captain on a pay account has a notation "under allotment at New York, so many pounds or so many dollars" that just means that is the place he sent the letter, to Greece, is that right? A. I repeat the mechanics. The captains give an order to each man involved, made payable to his counterpart in Greece by our Piraeus house.

Q. You mean, the captain gives a draft, is that it? A. Yes, and at the same time sends a list to our piraeus house of the orders he issues for checking purposes.

Q. Now, when these drafts are paid, are the original maintained by your office in Greece? A. Yes, in Greece.

Q. Showing the date of payment? A. The recipient signs to have received the amount.

Q. Do you know a Dr. Aristides Larsos? A. Yes.

Q. Is he a relative of yours? A. No.

Q. Is he a relative of any officer or director of Hellenic Lines? A. I don't think so; not that I know of.

Q. What, if anything, did you personally have to do with Mr. Soterios Hiotis when he left the vessel? A. Nothing; I personally, nothing.

Q. Did you have anything personally to do with Mr. George Tassou? A. I don't know the name.

Q. Did you have anything personally to do with Mr. Michel Mihalarios? A. I do not remember.

Q. I hand you, sir, an envelope and I ask you if you recognize this? A. Recognize what?

Q. The envelope and the postage identification on that envelope as being an envelope that originated from Hellenic Lines? A. It looks so.

Mr. Morewitz: I ask that this envelope be marked Libellant's Exhibit 1 of this date.

(The envelope referred to was so marked by the reporter.)

Q. I hand you another envelope and I ask you if you recognize this as being an envelope having its origin with Hellenic Lines? A. Yes, I do. I have heard of collections being made of postage stamps, but not of envelopes.

Mr. Morewitz: I ask that this be marked Libellant's Exhibit 2 for Identification of this date.

Mr. Furr: Unless these are connected at some later date, we are going to object to both of these exhibits.

(The envelope referred to was so marked by the reporter.)

Q. Let me ask you, Mr. Callimanopulos—Hellenic Lines does have envelopes which it uses regularly reading in the

upper left-hand corner "Hellenic Lines, Limited, 39 Broadway, New York 6, New York"; that is correct, is it not? A. No, they are not; this is part of the postage stamp. (indicating)

Q. I am talking about the left-hand corner? A. This? (indicating)

Q. This is an envelope that you use regularly, is that correct, in that length? A. It looks so.

Q. The envelope you use generally have that wording? A. It is an envelope that somebody could have gotten by going to our printer and getting dozens of them or stolen some from our office.

Q. But the envelopes you do use have this wording; is that correct? A. Right.

Q. And the postage machine that you used bears the wording shown on these two envelopes "Hellenic Lines—Regular Services between U.S.A. and Mediterranean/Red Sea, Arabian Gulf/India;" that is correct? A. Yes. I will add there is nothing to convince anybody that these envelopes were used for the company's own business. It could very well have been affixed by someone in this office and mailed.

Q. How many Hellenic Line vessels have been inspected and certificated, carrying passengers, by the U. S. Coast Guard? A. Several; a restricted number of passengers.

Q. Would you say that ten have those certificates? A. At least.

Q. Would you say that all of the vessels? A. All the vessels trading from here—calling at the American posts as a rule can carry passengers.

Q. And as a rule they have been certificated as such by the U. S. Coast Guard? A. Yes; but I repeat, they carry a restricted number of passengers.

Q. I hand you a paper and I ask you if you recognize that as a type of ad that is run by Hellenic Lines almost

daily in newspapers in the United States? (indicating) A. Not daily; occasionally—because it is very expensive.

Q. At least once a week, wouldn't you say, sir? A. No; not even—anyhow, it is inserted.

Q. Now, since the Grigorios C. has been owned by Hellenic Lines, it has only operated on voyages that either began or end in the United States; isn't that right? A. Yes; not exclusively.

Q. Almost exclusively? A. Yes.

Q. Now, during the time Mr. Mihalarios was employed aboard the Grigorios C. when and where did the articles of that vessel begin and close? A. All the articles on our vessels begin and end in Greece.

Q. Even when the vessel starts out in Germany? A. Yes, sir.

Q. And that is where it was built? A. She was built, to the best of my knowledge, in the United States.

Q. When you take delivery of a vessel in Germany, if she is built there, the articles are still open in Greece rather than in Germany? A. They go through the Greek Consul at Germany; that has nothing to do with the Grigorios.

Q. But anyhow in the case of the Grigorios you went through the Greek Consul in New York, did you not? A. When?

Q. First, initially when you bought the vessel in the United States? A. When (pause) 1948?

Q. In 1963, fifteen years later, in January, you closed a set of articles and you opened a set of articles in New York? A. No; all our articles are closed and opened in Greece.

Q. I hand you, sir, a paper which is in the Greek language, with English translation attached, and I ask you whether this paper sets out the facts in regard to articles

on the steamship Hellenic Glory? A. I thought we were talking about the Grigorios. Now, we are jumping to something else. What is the question now? You gave up the Grigorios. What is your question now?

Mr. Morewitz: Will you read the question, Mr. Reporter?

(The reporter read the question, line 25, page 46.)

Q. Do these two photostats set forth the facts with regard to articles on the Hellenic Glory during the employment of Mr. Hiotis, if you know? A. Now, this part, according to what you have here, the authenticity of which I can't guarantee or check—has been discharged in Greece.

Q. Yes, sir; but that paper also shows that the articles of that vessel were closed in New York and new ones opened in New York? A. No; this man has signed on in New York and was discharged in Greece.

Q. Will you look at the photostat underneath the one you are looking at now—the other page? A. There is something wrong. There is no name mentioned in any of the papers you are producing here—no name of a man. One says that a "certain un-named person" has been signed on in New York on March 9, 1962, and that he has been discharged—again without mention of the name of any person, in Greece, at Heraklion—in Greece.

Q. And it also says that he was signed on ship's articles in New York No. 87/1961? A. Shall I refer to the second photostat copy of something that you have here?

Q. Is that what it says? A. (No response.)

Mr. Morewitz: I ask the reporter to mark these photostats as Libellant's Exhibits No. 3 and 4 for Identification as of this date, so that the record will show which photostats we are talking about, and then I will ask Mr. Callimanopulos some questions in regard thereto.

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Mr. Reid: We object to them since there is no name or any signature apparently on these documents, according to Mr. Callimanopulos.

Mr. Morewitz: There isn't. I agree with you. Mr. Callimanopulos is surprised as to how a Greek seaman's book looks and is registering his surprise. I don't blame him. I was surprised the first time I saw one.

The Witness: It is the most peculiar thing I have seen in my life. You produce these things, I don't know for what purpose.

There is no name of any person being involved. The only thing that it says is that somebody signed on as a seaman in New York and was discharged in Greece; and the second, that somebody—again without a name—signed on in Khanea and was discharged in New York.

I must make clear that to the best of my knowledge all our articles are drawn up in Greece because all our ships, even those trading beyond the Suez Canal, call at the Greek port either way.

It is only as a result of sickness or an accident that a person may temporarily be discharged in New York or elsewhere for treatment or repatriation as a result of such sickness or accident.

Q. We are in agreement, are we not, Mr. Witness, that this paper which has been marked Libellant's Exhibit 3 for Identification of this date says that this person was employed— A. (Interposing) Which person?

Q. We will come to that in a minute. Let's do one thing at a time and ask the questions and we will make better progress. A. If you have similar documents, we can never make progress on anything.

Mr. Furr: Mr. Morewitz, he has translated it for you.

Mr. Morewitz: No, he hasn't; he has evaded the question and I am going to pin him down.

Q. I repeat, sir, we are in agreement, are we not, Mr. Witness, that this paper which has been marked Libellant's Exhibit 3 for Identification of January 10, 1964, shows that a seaman was employed at New York on March 9, 1962 aboard the Hellenic Glory in the capacity of AB under ship's articles numbered New York No. 171962?

Mr. Reid: I object to the question; it presupposes that the ship's articles which have not been produced—you are asking him to make a comment or give testimony about a document which is not before him; and you are asking him whether or not he is in agreement. We don't care whether he is in agreement with you or not. It is improper as to form. You are showing him a document you haven't asked him to identify. There has been no evidence here that this is a document from any person or any agency or any corporation.

Q. (Continuing) Is that what that paper says, Mr. Witness?

Mr. Reid: The paper speaks for itself.

Q. Is the witness going to answer the question or is he going to decline to answer? A. It is the most fantastic—

Q. Just tell me what the paper says?

Mr. Reid: I object to your asking him to translate it for you. If you do, pay him a fee.

A. What do you want me to answer?

Mr. Morewitz (to reporter): Will you read the question?

(The reporter read the question, line 21, page 50.)

A. The number doesn't call for a number.

Q. "Ship's Articles" and will you read that line? (indicating to the witness.) A. Where is the number?

Q. No. 17—right after it—and then the words in Greek say “New York”? A. I challenge the authenticity of this exhibit so long as there is no name of any seaman mentioned.

Q. Are you familiar in any way with Greek seamen’s books, Mr. Witness? A. Yes.

Q. I hand you another paper and I ask you if you can identify that paper? (indicating.) A. I just see it.

Q. Do you know what it is?

Mr. Reid: We don’t admit the authenticity of this paper (referring to the paper Mr. Callimanopulos the witness is holding in his hand).

Q. Do you know what it purports to be?

Mr. Reid: The document speaks for itself.

A. It just speaks for itself. Do you want me to translate it for you?

Q. Have you ever seen any similar paper before? A. Not I personally.

Q. Not necessarily with that name, but in that form? A. I have not seen it.

Q. You have never seen a Greek seaman’s book before?

A. This is not a Greek seaman’s book.

Q. This isn’t the first page of a Greek seaman’s book; is that correct? A. No; I don’t know.

Mr. Morewitz: I ask that this document which Mr. Callimanopulos is unable to identify as the first page of a Greek seaman’s book be marked as Libellant’s Exhibit 5 for Identification.

Mr. Furr: We object since the witness cannot identify the sheet of paper.

(The document referred to was so marked by the reporter.)

Q. I hand you a paper bearing the seal of the United States Consulate in Greece and I ask you if you can identify the signatures on this page which I will have the reporter mark one, two and three (pause). Let the record show that the witness, instead of examining the signatures, is proceeding to examine the document from the first page. He is studying it very intently, but he is not looking at the signatures.

Mr. Reid: We object to the form of the question since there has been no foundation laid in the form proposed and we object to counsel's unilateral remarks.

A. There are only two signatures, not three. To the best of my knowledge, this is the signature of our Mr. Pangos.

Q. What is the position of Mr. Pangos, sir, with Hellenic Lines? A. He is managing director, as I have already told you.

Q. It says here he is "vice president"; is he mistaken? A. (no response—witness shrugs.)

Q. The witness shrugs. Is Mr. Pangos mistaken when he states he is merely the vice president? A. I consider the managing director as the vice president to be the same thing so far as Greek corporations are concerned.

Q. But there is a corporate book somewhere that shows the exact title of Mr. Pangos, is there not? A. The corporate book has since been amended.

Q. It has? A. Yes.

Q. When was it amended, sir; when was this corporate book amended? A. I don't remember.

Q. Recently or a long time ago? A. I don't remember exactly.

Q. Within the past year or more than a year? A. I don't remember exactly; it must be more than a year.

Q. More than a year? A. Yes.

Q. Certainly it is more than a month ago? A. Yes.

Q. More than six months? A. I think so.

Q. More than two years ago? A. I don't know.

Q. But there is a record that we could establish this from? A. Certainly; from the company proper in Greece.

Q. Now, when Mr. Pangos says, under oath, that "respondents admit that new ship's articles were opened at New York on March 9, 1962 at New York, New York"—when he says that he is mistaken; is that correct? A. I don't know.

Mr. Reid: I object to the form of the question.

Mr. Furr: I object to it; it is taken out of context and is just part of the whole answer.

Q. No matter what he says, you say there were no articles ever opened in New York; is that right?

Mr. Reid: You know it is improper to ask a witness whether or not he agrees or disagrees with another witness.

Q. There are corporate records that show what taxes are paid to the Greek Government each time a set of articles are closed or a new set of articles is opened; that's right, isn't it? A. That is done in Greece; never here. We never paid a penny here for articles.

Q. There is a record, and that record shows when the articles opened and closed? A. I tell you we never paid a penny here. That I must emphatically say—we have never paid a penny of those taxes here; they are all paid in Greece.

Q. Have you ever seen the seal of the Greek Consulate Office in New York—the stamp seal, a rubber stamp seal?

A. I must have seen stamps.

Q. Does this seal on these papers which have been previously marked Libellant's Exhibits 3 and 4 for Identification look to you like the seal of the Greek Consulate at New York? A. I couldn't tell you.

Q. Where is the Hellenic Glory at the present time, to the best of your knowledge? A. In the United States; some port in the United States.

Q. Is there any reason why you cannot obtain a photostatic copy of the articles of the Hellenic Glory presently in effect? A. I can obtain them if so directed by proper authority.

Q. I call your attention to this order under which you are testifying, Mr. Witness.

Mr. Furr: Read the order, Mr. Morewitz.

Mr. Morewitz: It says "Such records as may be available in the office of Hellenic Lines, Limited, 39 Broadway, New York, New York, may be called for production by Proctor for either party, but if such specimen document or copy thereof is not available, it may be described by the witness in general terms and may thereafter be subject to the ruling on a motion to produce. As to any document available in the New York office of respondent where, if objection be made to the disclosure of said document, or any part thereof, said document shall, upon request of any party, be forwarded or delivered to this Court for inspection in camera."

(To reporter) I ask you to read the outstanding question to this witness and see if we can get an answer from him rather than a question.

(The reporter then began to read back the questions and answers beginning with line 16, page 55.)

Q. I ask you, Mr. Witness, will you make a copy of those articles available?

Mr. Reid: Which articles are you talking about?

Mr. Morewitz: The ones presently in effect on board the Hellenic Glory which the witness says is presently in the United States.

Mr. Reid: What has that got to do with this case?

Mr. Morewitz: They replaced the articles and they replaced them in the United States; and you knew it, Mr. Reid, if your memory is good, that they replaced the articles the last time we were here—and that showed that they were changed in the United States.

Mr. Furr: Mr. Morewitz, it only refers to the records that may be available in the office of Hellenic Lines in New York, and the witness has stated that the articles are aboard the vessel.

Mr. Morewitz: They are available and we called for them and he declines to produce them and we will take the appropriate action. I don't want this witness or any other witness in this case to keep on doing away with documents. We had the old documents available, then they weren't available; and now we are going to have them.

Mr. Furr: I am instructing the witness not to answer the question since this is not covered in the Court's Order. Mr. Morewitz can file a motion for production if he so desires; and I move to strike Mr. Morewitz' comments about documents disappearing since there is no evidence of such.

Q. Where are the articles of the Hellenic Glory that were in effect when Mr. Hiotis was employed on board the vessel? A. I don't know when he was employed or where the articles are.

Q. He was employed from September 24, 1961 and discharged September 7, 1962, according to this statement sworn to by Mr. Pangos? A. I don't know where they are. The only answer is, generally, that when closed they are returned to Greece, to the Ministry.

Q. Does your corporation maintain records showing what disposition you have made of these articles? A. No; I think the articles are kept by the Consulate or Greek employees of the Greek Ministry, and then I think the owners are called upon to pay the taxes. (Pause) Gentlemen, it is five o'clock.

Q. Does your corporation—

The Witness: I am 72 years old, and I am sorry, I cannot stay beyond five o'clock under my doctor's orders.

Mr. Reid: Are you under doctor's orders, Mr. Callimanopulos?

The Witness: Right.

Mr. Morewitz: He is under Court Order too. (To witness) When are you going to be back-

The Witness: I can be available Tuesday at three o'clock.

Mr. Morewitz: I have another engagement Tuesday afternoon to see another witness. I came up here under this order for this witness to be produced at ten o'clock this morning; he wasn't produced until two-thirty this afternoon. I am going to be here tomorrow. This witness can come back here tomorrow. I am going to be here Monday morning and Monday afternoon—all day Monday. I am going to be here Tuesday morning. At the conclusion of the other deposition that I am taking Tuesday afternoon, I have another engagement in Newport News and I am leaving here. This gives this witness adequate op-

portunity to adjust his schedule into somebody else's convenience. This examination was supposed to have been had at ten o'clock this morning; at Mr. Furr's insistence that the time be extended until two o'clock this afternoon at which time he could produce this witness—I don't have to stay up here forever for this witness to testify and I don't intend to.

Mr. Furr: Mr. Morewitz agreed to postpone it this morning from ten o'clock; it was by agreement.

Mr. Morewitz: The agreement was that he was going to produce him tomorrow morning or Monday morning. (To Mr. Furr) You deny that, Mr. Furr?

Mr. Reid: I would like the record to show that Mr. Morewitz is now standing up yelling and screaming.

Mr. Morewitz: I want Mr. Furr to tell me that he didn't promise to produce this witness either tomorrow or Monday if he couldn't finish up today?

Mr. Furr: Mr. Morewitz, I am not the witness in this case.

Mr. Morewitz: I am asking you now to deny it on this record.

Mr. Furr: I am not denying anything. We said we would produce the witness later if we didn't finish. I believe a full discovery has already been completed today and all essential questions have been covered. I think it should be terminated now.

Mr. Morewitz: I want an explanation from this witness as to why he can't be here either tomorrow or Monday all day or Tuesday morning—why he has to choose Tuesday afternoon. What is so pressing that he can't appear here?

The Witness: I was here at two o'clock waiting for you.

Mr. Morewitz: You were here at two o'clock in this room?

The Witness: I didn't go out for lunch, waiting for you. I was here from nine o'clock in the morning. When I was through with my work, it was one-thirty; and because I thought you were going to be here at two o'clock I stayed inside and had a sandwich and nothing else. There is a limit to every resistance. Goodnight, gentlemen.

Mr. Morewitz: (To reporter) Show that the witness walked out and has not been excused; and I now move for default.

Mr. Reid: Mr. Morewitz, you are not going to appear on Tuesday afternoon?

Mr. Morewitz: The Court knows I have a case with Mr. Walter B. Martin at Eagle Ocean Transport at the beginning of two o'clock.

Mr. Furr: Is there some later time you you would like it?

Mr. Morewitz: When I came here on time at the time you specified and you asked me to give you a slight continuance if you will produce a man later on either Saturday or Monday and you say you will produce him on one of those two days if it takes longer, and you don't produce him until two-thirty, and you say you won't produce him on Saturday or Monday, and you say you can't produce him until Tuesday afternoon—if I don't get a default now, I should never get one. I also want the record to show that there are documents available in this office that the witness has referred to that have not been produced. There is no indication from the respondents that they are going to produce these documents, and that is in violation of the Court Order too.

Mr. Reid: What documents? Specify what the documents are—with a description for identification?

Mr. Morewitz: The record speaks adequate as to what this witness said he has and what he was going to seek for; and he has seen fit to walk out.

Mr. Reid: You haven't answered my question, Mr. Morewitz.

Mr. Morewitz: I don't think I am on the witness stand. Of course, if you want to take on the witness stand, we might take some testimony from you which might be enlightening, and the same applies to Mr. Hennessy. I suspect Mr. Furr will have that opportunity.

Mr. Furr: To testify?

Mr. Morewitz: Right—as to what agreements he made. (pause) The witness having gone five minutes ago, I think I shall follow him out the doorway; this deposition having commenced at two-thirty instead of two o'clock; it is now 5:05—counsel having been here since 1:45.

(Whereupon Mr. Morewitz and the reporter left the examination room, the witness having done so five minutes earlier.)

.....
Subscribed and sworn to before me this ... day of
....., 1964.

.....
Notary Public

State of New York }
County of New York }

I, Harry Levy, a Notary Public in and for the County of Nassau, State of New York, do hereby certify:

That on the 10th day of January, 1964, there appeared before me pursuant to order, Mr. P. G. Callimanopulos, as a witness in the above entitled cause;

That the said deposition was then taken at 39 Broadway, New York, New York, beginning at the hour of 2:30 P. M. and ending under the conditions described in the transcript at 5:05 on said date.

That John P. Cassapoglou, Esq. and Burt M. Morewitz, Esq. appeared on behalf of the Libellants, and Carter B. S. Furr, Esq. and Edwin K. Reid, Esq., appeared on behalf of the respondents.

That the said witness was sworn by me and examined, to tell the truth, the whole truth, and nothing but the truth in said cause;

That the foregoing testimony was taken by me in shorthand and thereafter reduced to typewriting by me, and the foregoing 62 pages contain a full, true and correct transcription of all the testimony of said witness.

That the said deposition having been transcribed, was forwarded to the witness for his signature.

That I am not of kin or in anywise associated with any of the parties to said cause of action or their counsel, and that I am not interested in the event thereof.

In Witness Whereof, I have hereunto set my hand this 25th day of January, 1964.

Harry Levy

Harry Levy

Notary Public, State of New York

No. 30-2338702

Qualified in Nassau County

Commission Expires March 30, 1965

Residence address:

506 Lindell Blvd

Long Beach, New York

RESPONDENT'S EXHIBIT NO. 4

United States District Court
Eastern District of Alabama
Mobile Division

Zacharias Rhoditis

vs.

**Hellenic Lines, Ltd.
The Hellenic Hero**

Deposition of Mr. Zacharias Rhoditis, as interpreted by Mr. William E. Stavis, taken pursuant to the following stipulation before Mr. Clyde Merritt, a Notary Public in and for the Parish of Orleans, State of Louisiana, as given in Room 215 of the Montelepre Memorial Hospital, New Orleans, Louisiana, on the 16th day of August, 1965.

Appearances:

Mr. Joseph B. Stahl, Mr. Ross Diamond, Jr., of Mobile, Alabama, for Plaintiff;

Phelps, Dunbar, Marks, Claverie & Sims (By: Mr. Gerard T. Gelpi);

Mr. George Woods, of Mobile, Alabama, for Defendants.

Reported by:

David L. Bendix, official court reporter.

STIPULATION

It is stipulated and agreed that the deposition of Mr. Zacharias Rhoditis is hereby being taken pursuant to the Admiralty Rules for all legal purposes. All formalities, including those of signing, sealing, certification, filing and

the usual requirement of the Notary Public not being an interested party are waived. All objections, except those as to the form of the question, shall be reserved until time of trial of the cause.

Mr. Zacharias, Rhoditis, of Queen Frederika 22 Volos, Greece, the witness named in the above Stipulation, and the interpreter, Mr. William E. Stavits, of 237 Decatur Street, New Orleans, Louisiana, both having been first duly sworn, testified as follows in response to interrogation of Counsel:

(Note: As the witness, Mr. Zacharias Rhoditis, spoke no English, all of the answers appearing hereunder were given by the interpreter, Mr. William E. Stavits, after translation.)

Mr. Gelpi: First, this deposition is taken by agreement rather than pursuant to notice—

Mr. Stahl: Right.

Mr. Gelpi: —And we are appearing on behalf of Hellenic to represent them in the taking of the deposition. As the caption will reflect, the suit is filed in Admiralty in the U. S. District Court in Mobile, Alabama. We are waiving only the formality of notice. We are not in any way waiving any of the defenses or consenting or agreeing that the suit filed in Admiralty in Mobile can or should be litigated in this country. We fully intend, at the earliest practical moment, to move the Court to exercise its discretion not to take jurisdiction of this case on grounds which will be stated in the motion and memorandum at the appropriate time, in which it shall be requested that the case be dismissed for prosecution, if necessary, in Greece. We will, as mentioned before the deposition, of course, waive the signing and sealing and certifying, and agree that the deposition can be taken for perpetuation of testimony, de bene esse, or for discovery purposes, and

that objections will be only as to the forms of the question at this time and made more fully and explained at the time of the trial.

By Mr. Stahl

Q. Are you the Zacharias Rhoditis who is the plaintiff in a law suit filed against Hellenic Lines on or about August 13th in Federal District Court A. Yes, for breaking his foot and his suffering he has.

Q. What is your age and the date of your birth? A. He is 38 years old; he was born 10th of June, 1927.

Q. Of what country are you a native? A. Greek, Greek Orthodox.

Q. Do you speak any English at all? A. No.

Q. Do you read Greek? A. Very little, he didn't go to school.

Q. What is your occupation? A. He's a seaman.

Q. What grade of seaman are you? A. AB.

Q. How long have you been a seaman? A. From 1947.

Q. And how long have you been an AB? A. In 1960 I got my diploma.

Q. Is Hellenic Lines, the defendant, your present employer? A. Yes.

Q. How long have you worked for Hellenic Lines? A. One month and one day, from July 2nd 'till August 3rd.

Q. On the basis of what incident or incidents did you file this law suit against Hellenic Lines? A. Because I broke my foot and I have severe pain.

Q. Now, describe how your foot was broken. A. When we went to tie up the spring line.

Q. Now, where did this injury occur? A. On the ship. They were tying up the ship. They had a keeper on a spring line and the keeper broke. The chain whipped around and broke my leg.

Q. Where was the ship at this time? A. In the river, right next to—in the river at New Orleans, right next to a factory.

Q. All right. A. At the dock, he evidently means.

Q. Yes. When did it occur, what date and time? A. 7:00, August 3rd.

Q. A. M. or P. M.? A. A. M.

Q. Now, describe exactly how this chain hit your leg; from beginning to end, exactly. A. Those are the bitts (indicating), and the spring line was coming through the bitts, going over to the winch.

Q. All right. Now, go ahead. A. There was a seaman over by the bitts that put the keeper on.

Q. Now wait, what is a keeper? A. Well, that is that—

Mr. Gelpi: Let him answer.

A. A chain that holds the spring line so it won't slip.
By Mr. Stahl

Q. All right. A. He was over by the winch. The Mate called to tie it up, so they loosened the line from the winch and they put one turn around the bitt. When they were putting the second turn around the bitt, the chain broke and hit him in the foot.

Q. All right. Now, when the chain broke, did it whip around and hit you, or was it right next to you or how did it happen; how far away were you from the chain? A. Half a meter. He had—he was half a meter from the chain. He put one turn on the bitt, and the other guy was supposed to put another turn on the bitt, and he was waiting on him when it broke.

Q. All right. Did the chain, when it broke, fly through the air quickly or slowly, or how?

Mr. Gelpi: I object to the form of the question.

Mr. Stahl: All right. Let him go ahead and answer it.

Mr. Gelpi: Yes, sure.

By Mr. Stahl:

Q. Just ask him how fast did the chain fly through the air. A. He says that he didn't see it. He says it broke and took the wire and everything from his hands, and he didn't see nothing, that's when he fell. He couldn't see, it happened so fast.

Q. All right. Now, the part of the chain that hit you, describe the wound that it left on you. A. It made two holes in his skin and broke his bone, and the blood was squirting out.

Q. Now, you say it made two holes in your skin; in other words, two pieces of metal on the chain hit you?

Mr. Gelpi: Object to the form of the question.

A. He didn't see the parts of the chain. The chain broke, and it hit him.

By Mr. Stahl:

Q. And he says he did not see the part of the chain that hit him? A. No.

Q. All right, but it left two wounds on your leg? What did he say? A. He said yesterday, Monday, when he took the cast off, the blood was still running.

Q. Which Monday was that, what is the date of that Monday? A. The 9th.

Q. The 9th; would you describe the wounds as bruises, or cuts, or how? A. Cuts, it's bleeding. The way it hit him, it made two holes.

Q. All right. How deep were these holes?

(The witness indicates with a cigarette butt.)

A. The hole was as wide as a cigarette, and it was about $\frac{3}{8}$ of an inch deep, and he says he couldn't see because the flesh was coming out.

Q. All right. What was done on the ship to help you until you could be brought to a doctor? A. They took his shoe off and they put him on a stretcher, and they took him out on the dock, and the laborers brought him to the side to wait for the ambulance.

Q. All right. Now, during that time, was your leg bleeding? A. Yes, it's been running continuously, even up till the other day, Monday.

Q. Was a tourniquette placed on your leg to stop the bleeding?

Mr. Gelpi: Object to the form of the question. Go ahead. A. No, only at the hospital they gave him an injection. They put gauze on it, and then they put the case on.

By Mr. Stahl

Q. Was anything done before the ambulance came to ease your pain? Wait a minute, explain to him just to answer my questions, not to get ahead of me, just to answer my questions; on the ship, before the ambulance came; what was the answer to the question? I asked him whether anything was done to ease his pain. A. No.

Q. No, all right. Were you in pain? A. Very much, it was hurting him very much. Even in the ambulance, it was hurting.

Q. All right. What was done for you when you went to the hospital, what did they do for you at the hospital? A. They give me an injection, they took pictures, and they put the plaster cast on.

Q. Did they give you any medication there? A. They gave him some medication, some pills, and they took him

to the ship. He couldn't stand the pain, and they brought him out to this hospital.

Q. All right. How long was it between the time the chain hit you and you were taken to the first hospital?

A. He didn't know, he didn't have a watch; about an hour.

Q. How long was it after they brought you back to the ship, in other words, how long did you remain on the ship until you were brought to this hospital, after you were returned to the ship? A. He was on there about three quarters of an hour. His pain was so great that he couldn't stand it any longer, and the Mate come down and saw him and sent him off.

Q. All right. Do you know the name of your doctor here? A. He says it's something like "Katsikas," "Kitchika" (Note: Spelled phonetically.)

Q. Now, you said that you were given some medication at the first hospital you went to for your pain; did it suffice to reduce the pain? A. No.

Q. No; were you given any medication for pain at the second hospital that you were brought to, this hospital? A. They did, but they don't do him no good. You want all this?

Q. Everything he says. A. 7:00 this morning they give him some, and last night they give him some. They always give him some, but they don't do him no good.

Q. Do you still have the pain now? A. All the time.

Q. All the time; how great is it? A. Yes, very much. If it was little, he would say it was.

Q. Is it as great as it was when you first received the injury?

Mr. Gelpi: Object to the form of the question.

By Mr. Stahl

Q. All right, let him answer. A. It's very little better.

Q. Does your leg hurt any more when it's in one position than when it's in another? A. Any way he turns it, it's the same thing, it hurts him.

Q. What was that last remark? A. Any way he puts it, he says, it hurts him.

Q. Does it hurt you any more when it's hanging down than when it's up like it is now? A. When he hangs it, when he went to the toilet a couple of times, it's unendurable, the pain, almost unendurable.

Q. Does the pain interfere with your sleeping? A. It keeps him from sleeping, but from fatigue he drops off to sleep.

Q. From what? A. From fatigue.

Q. Now, when you fall asleep from—— A. Well, it's tired, he gets tired and falls off asleep.

Q. When you fall asleep from fatigue, about how long do you remain asleep? A. About an hour. The pain wakes him up again.

Q. Did you explain to Dr. Kitziger that the pills weren't doing you any good? A. Yes, I told him. I take the pills and it still hurts.

Q. When did you tell him this? A. The other day, he told him.

Q. Which day? A. Saturday. He says they give me pills for pain and it still hurts me.

Q. Did you explain this to the doctor on Saturday—what was the date of that Saturday? A. Yes, on Saturday I told him, on Saturday.

Q. What was the date of that Saturday? A. The 14th of the month.

Q. All right. Why didn't you tell him that sooner? A. He told him before, Wednesday, but he can't make him understand, and he don't understand the doctor.

Q. Why can't they understand each other? A. Because he don't know the language to speak.

Q. After you explained to Dr. Kitziger that the pills weren't doing you any good, did he change the pills? A. No, the same.

Q. All right. Do you know whether the pills you are taking have any narcotics in them? A. He don't know whether they've got narcotics in them or not.

Q. Do they make you feel dopey? A. No.

Q. Now, since the cast was first put on, how many times has it been cut off for examination and another one put on? A. Once.

Q. And when was that done, what day and what date? A. Monday, the 9th of the month, in the morning.

Q. All right. Now, did you see your wounds when they took the cast off? A. Yes, I saw them.

Q. What state or condition were they in? A. They were about the same, they were bleeding.

Q. And what was the date of this again, I didn't get that. A. The 9th.

Q. The 9th; you say that they were bleeding, did you say that they were bleeding? A. Yes.

Q. Was there anything besides blood coming out of them? A. Some blood and water.

Q. What else? Translate everything he says. A. It was eight days in the cast.

Q. All right. So, there was water and blood coming out. Was it bleeding much; how much? A. He can't explain exactly how much, but it was running.

Q. All right. A. It was running down his leg.

Q. Do you feel that you are fit to travel back to Greece now?

Mr. Gelpi: I'm going to object to the form of the question. A. No, I can't, my foot hurts me.

By Mr. Stahl

Q. Besides the pain, is there any reason why you don't feel that you are fit to travel? A. He's afraid for his foot, he's afraid to travel.

Q. On the basis of how much your leg has improved since the accident, when do you think you'll be able to travel?

Mr. Gelpi: Object to the form of the question.

A. He says in about a month, he says, if it's better.

By Mr. Stahl

Q. All right. Did you know that your doctor had discharged you as a patient? A. Yes, and they give me pills to take at home.

Q. Have you been able to contact anyone at the company, any of the company's representatives, to explain to them that you don't feel that you're ready to go home? A. No. The Port Captain called me up on the phone, he said, called him up Thursday on the phone and said that, "Monday you're going to Greece." He says, "When my leg gets better, I'll go to Greece."

Q. Did you explain to him that you did not feel that you were ready to go? A. He told him.

Q. All right. A. Before it gets better.

Q. What did he say? A. He says that he didn't say nothing, he said, "Anything the doctor said you can do."

Q. Did the Port Captain tell you anything else besides that?

Mr. Gelpi: Object to the form of the question.

A. You want this?

By Mr. Stahl:

Q. Whatever he says. A. He says, "The lawyer that you put on, who is going to pay him?" He says, "That's no concern of yours." He says, "Well, you're going to lose your money."

Q. Who said this, the Port Captain? A. The Port Captain.

Q. All right.

Mr. Gelpi: I move to strike the testimony on the grounds that will be introduced at the trial to support the objection made.

By Mr. Stahl:

Q. When you do return to Greece, do you feel that it would be safe to travel by ship?

Mr. Gelpi: Object to the form of that question also.

A. He's afraid to go on a ship.

By Mr. Stahl:

Q. Why? A. He's afraid for his foot.

Q. Well, why is he afraid that traveling by ship is going to be dangerous for his foot? A. He says when it's well we travel on the ocean and we don't do so good. With a broken leg, how am I going to get over there?

Q. All right. Now, on the ship, whose job was it to see that this chain was in good condition? A. The Chief Mate and the bosun.

Q. Did you at any time before the accident occurred notice the condition of the chain? A. The chain looked all right, it was like new.

Q. Had it ever broken before? A. No, it had never broken.

Q. What rate of pay were you on as an employee of Hellenic Lines? A. Forty-four pounds.

Q. Per what? A. A month.

Q. Were you eligible to receive pay for overtime work?
A. In twelve days I had a hundred hours.

Q. Was that overtime alone? A. And two pounds of working in the hold.

Q. But was that all overtime? A. Yes, overtime.

Q. Now, since 1961, at which time you became a Seaman A. B., what was the average amount of overtime that you made a month, the average number of hours in a month that you worked overtime? A. It depends on the ship, what kind of ship. In some ships you have more overtime than others.

Q. Well, in the month that you had worked for Hellenic Lines, how many hours overtime had you put in? A. 120-30 hours. From Crete over here they didn't make overtime, but over in Crete, they made overtime; and when they got over here, they made overtime.

Q. What was the total hours? A. 130.

Q. And all that 130 hours was overtime alone? A. All overtime.

Q. Now, of this overtime pay, do you receive any more by virtue of where on the ship you work, for one kind of overtime work than another kind? A. Yes, odd jobs that you get two for one, three for one, and it all depends.

Q. All right. Now, this overtime that he made with Hellenic Lines, was it two for one or three for one, or if it was both, how much of which was the 130 hours? A. It was single, four or five hours were only double, two for one.

Q. I didn't hear your whole answer. Say it again. A. It was single, single overtime; in other words, one for one, one hour for one hour's work. Only four or five hours were double overtime, two for one.

Q. Now, on the average, in the last five years since you've been an A. B., what have you averaged in overtime

pay alone? A. No less than eighty hours a month. They don't figure that, but it varies with ships, different type ships.

Q. But in money, not in hours, what is the average amount of money he has made overtime? A. Around \$50.00.

Q. All right. Are you married? A. Yes.

Q. Do you have any children? A. Two.

Q. Does your family receive any support from anyone besides you? A. No.

Q. You mention that you read very little Greek is that correct? A. Yes.

Q. All right. When you went to work for Hellenic Lines, did you have to sign any articles or agreements regulating the obligations due by you to your employer and by him to you? A. Yes, he says the company puts out some papers, documents, and everybody signs them.

Q. All right. Now, did you read these articles before you signed them? A. No, he didn't read them because everybody signs, the company says they're all right.

Q. The company says they're all right; are you aware that the articles which you signed make a provision in which you agree that you will not sue the company anywhere but in Greece for injuries that you might receive? A. No, I don't know.

Q. Do you know who owns Hellenic Lines? A. Kalimanopoulos.

Q. Do you know how long he has owned the company? A. He don't know, but he hears others, it's a well known company.

Q. All right. Where does Kalimanopoulos live? A. In America, his office, in New York.

Q. Do you know how long he's been living in America? A. No, he has the company for years.

Q. What did he say about how long he's been living in America? A. He don't know.

Q. He doesn't know; do you know if Kalimanopoulos is an American citizen? A. He don't know if he's American or Greek, but all his ships have American names on them.

Q. As far as you were able to discern, would you say that Hellenic lines was an American or a Greek Company, as an employee of it? A. He didn't know. He knows that his big offices are in New York, in America; but he uses foreign ships, Greek ships and American ships, all kinds of ships. He don't know what the company is.

Q. What was the name of the ship on which you were injured? A. HERO, H-E-R-O.

Q. Hellenic HERO; did this ship have a Greek flag on it? A. Yes, it had a Greek flag.

Q. Do you know whether the ship has ever had any other nationality's flag on it? A. No.

Q. He doesn't know? A. He doesn't know.

Mr. Stahl: All right, I have nothing else.

By Mr. Gelpi

Q. Did you sign Greek Articles? A. One paper that the company gave them that all the seamen signed.

Q. It was in Greek? A. Yes.

Q. He signed it in Greece? A. Yes.

Q. He is going back to Greece? A. I'm going when my foot gets better.

Q. How often has he been in America? A. Last year he—depending on the ship. Last year he was running from America to Japan, sometimes to Europe, one month, twenty days, sometimes two months, depending on the ship.

Q. The only time he is in America is when a ship is in an American port, is that correct? A. Yes.

Q. His family is in Greece? A. Yes, in Greece.

Q. As far as he knows, the only time he will be in America in the future is when he is on a ship in an American port, is that correct? A. With a ship in America. What am I going to do here? What am I going to do here without a ship?

Q. All right. You don't own any property in the United States? A. Not even in Greece, he hasn't.

Q. Have you ever been convicted of a crime?

Mr. Stahl: I object to the question for reasons that will be shown on the trial of the cause.

A. No, never, he's clean on that.

By Mr. Gelpi

Q. Has he ever been in the military service? A. In the Infantry.

Q. Greek Army? A. Yes.

Q. What years? A. From '50 to '53.

Q. Where did he serve? A. In Athens. You want all the places where he went with the Army?

Q. Yes, what he said. A. He went to Levadeia, they made him cook. Then he went to the Roof, that's a place in Athens; and then he went to Larisa, then he went to Grevena, and then he went to Edessa.

Q. Ask him what kind of discharge he received. A. I don't know what kind of rating.

Q. Ask him if he received a clean or an honorable discharge. A. Yes.

Q. What is the highest rate you have ever sailed at? A. Bosun.

Q. Bosun? A. Bosun, on a Greek ship, Bosun without a license.

Q. What education have you had? A. Third grade—second grade.

Q. What formal training have you had as a seaman?
A. Through employment, through working at it; no formal education.

Q. What shipping lines has he sailed with, other than Hellenic? A. Perivolani, twenty-two months; Batera, eleven months; Hagipatera, four months.

Q. Can you write in Greek or English? A. In English the only thing I can write is numbers, one at a time, and his address.

Q. Can he write in Greek? A. He says just writing home to his wife, and she's about the only one who can read his writing.

Q. Has he written any statement about this accident?
A. No.

Q. Has he signed any statements anyone else has written about the accident? A. No.

Q. Has he ever been injured before? A. No.

Q. Has he ever had any serious illnesses before? A. No.

Q. Has he ever filed suit against anyone before? A. No.

Q. Have you ever made claim against any employer before? A. No.

Q. Where in the Port of New Orleans was the ship when the accident happened? A. There's a factory where—that makes drums, drums of some kind. They were going up there to pick up; "Bend Rouge" (Note: Spelled phonetically.)

Q. "Baton Rouge" did he say? A. No, I don't think he said—he don't know the factory, it's the first time he's been here.

Q. Was it St. Rose?

Mr. Stahl: Wait a minute, he didn't say St. Rose.

A. He don't know.

By Mr. Gelpi:

Q. He doesn't know, all right. Who was in charge of the operation when you were injured? A. The Chief Mate.

Q. The ship was docking at the time he was injured? A. Yes.

Q. Who was handling the lines on shore? A. The workers, the workers, on the dock, Negroes.

Q. Had they made the lines fast on the shore at the time he was injured? A. Yes, two lines up forward and the spring. On the dock they were tied up, on the ship they were still on the winch.

Q. He was on the spring line? A. Yes.

Q. What size line was going to the dock? (Witness indicates) A. About an inch and a half, inch and a quarter.

Q. Inch and a half or two inch line, it looks like he is showing. A. Well, that's a metal line.

Q. Was this a cable or—— A. Yes, cable, metal line.

Mr. Stahl: How do you know, did he say that? A. Yes, wire.

By Mr. Gelpi:

Q. What size chain was this that parted? A. Like the bottom link on that thing (indicating a light fixture suspended from a chain in the hospital room).

Q. Well, I would estimate that the chain itself on the link is——

Mr. Stahl: Well, that's not what he said, he said it's the bottom——

Mr. Gelpi: Well, that's what I'm asking you, if we can agree—I'm just trying to get some idea of the size to put in the record. If we can agree on the size of that——

Mr. Stahl: Right, but that's not part of the chain, I don't think.

Mr. Gelpi: He is talking about the circular ring on the bottom. A. The circular ring on the bottom of the chain is about the size that broke on the ship.

Mr. Gelpi: Can we agree the metal on that ring is approximately a quarter of an inch?

Mr. Stahl: Yes, I think we can agree on that. Well now, wait, I would be more inclined to say three-eighths now that I have a good side view of it.

Mr. Gelpi: Between a quarter and three eights is fine with me.

Mr. Stahl: All right.

By Mr. Gelpi

Q. Who was in charge of the operation at the site; in other words, I know the Chief Mate is in charge of the docking operation; but who was at the site where you were, at the spring line, in charge? A. The Chief Mate, he was just over further than me.

Q. Who was in charge up on the bow of the ship? A. Well, he was up there on the bow with the Mate, the Bosun, the Carpenter, and two other ordinary seamen.

Q. Do I understand him correctly that one end of this mooring cable was attached to the dock, and the other end, after going around the bitts, was attached to the winch? A. Yes, the wire was long, the end 'way down, but the part that was on the winch.

Q. How long was this keeper chain? A. Two fathoms, about three meters, the chain was about three meters long.

Q. And to what was the chain fastened? A. On a bitt.

Q. How was it fastened to the bitt? A. He didn't see exactly how it was fastened at this time, but he knows there's a key that fits in the chain, and it secures it.

Q. To the bitt? A. To the chain. There's an open end on the chain, there's a pin goes through it, when you put the other link through to secure it.

Q. Has he ever worked with this chain before, this keeper line? A. All the ports they made in America they made with that same keeper.

Q. And this chain was in like-new condition, I believe he said? A. Yes.

Q. Were there any tugs assisting the HELLENIC HERO at the time of the accident? A. No—yes, one in the center of the ship.

Q. Which side of the ship was he on at this time? A. On the right side, on the dock side.

Q. The ship was facing up river? A. Yes, going up river.

Q. The tug was on the port side, the left hand side? A. Yes, on the outside. He didn't see it, but he heard it was on there. He was on the other side of the ship, working.

Q. Were the ship's engines operating at the time of the accident? A. Yes, at that time the engine turned over.

Q. Was the winch operating at the time?

Mr. Stahl: Wait, hold it before you answer. His answer was at that time the engine turned over; does he mean it turned over once, or it was turning over? What was the tense of that verb?

A. It just made one motion, going forward.

Mr. Stahl: All right.

By Mr. Gelpi

Q. Was the winch being operated, taking in on the line, at the time the keeper parted? A. No, they had stopped it to take the line off the winch, that's why they had the keeper on it, to fasten it to the bitt.

Q. Is the purpose of the keeper to put a strain on the line to hold it where it is, so that you can take the line off the winch and put it on the bitts? A. Yes.

Q. Who had attached the keeper to this line? A. One seaman.

Q. Who was this seaman? A. Diamond, they called him; he don't know his last name.

Q. How long had he been at the site of the accident, of his injury by the spring line, before he was injured? A. He don't know exactly; a half hour, fifteen minutes. They were all there tying the ship up.

Q. I mean, how long was he at the site of this keeper? I don't mean in the port, I mean right at the spot where he was injured by this keeper, by the spring line, before he was injured? A. He was right next to the keeper for about ten minutes. He was taking up the slack on the spring line before they had it secured.

Q. Who else was there besides Diamond, the Chief Officer and himself? When I say "there", I'm speaking about the spring line location where he was injured? A. And Christie, another seaman, three.

Q. Three other seamen? A. Two and him is three.

Q. Diamond is one of the two? A. And him, three; Christie, Diamond and him, three on the spring line.

Q. Did I understand him to say he does not know how the keeper was affixed to the bitts? A. No, not at that particular time, that's what he said.

Mr. Stahl: Ask him again.

By Mr. Gelpi

Q. That's what I thought he said. Did the keeper make any noise at the time immediately before it popped or after it popped? A. It made "bop". With the "bop," he grabbed his leg, his leg was hurt, and he fell down; and

he hollered, "Fellows, my leg is broke, or hurt." He said if he would have fell on the other side, on the wire, he said the wire would have crumbled him up, the spring line.

Q. He was on the dock waiting for an ambulance between a half hour and an hour? A. No, about ten minutes. The second time he was in bed, in the ship, when he come back.

Q. But he was on the dock the first time about ten minutes before an ambulance picked him up, that's what he said? A. Yes.

Q. Does he know the name of the hospital that he was taken to the first time? A. He don't know; a big hospital.

Q. How many doctors has he seen about his leg? A. One doctor at that hospital, one doctor here, one pathologist that checked him all over, and these guys that take the X-rays.

Q. Were you unconscious at any time? A. No, he didn't lose consciousness. He didn't lose consciousness, but he was in awful pain, and he—his head was in a turmoil.

Q. As I understand, when they took the cast off and put a new cast on, your leg was bleeding, is that correct? A. Yes, it was bleeding.

Q. But there was just a little blood, is that correct? A. He says there had to be more than a little blood because they put gauze on there, and it was blue, and they wrapped it up before they put it in a cast.

Q. Was this the first time they put it in a cast? I want to know about when they changed his cast after he was in this hospital. A. The wound was bleeding, and this water was coming out.

Mr. Stahl: Your question was, was this when they were changing the cast or when they first put it on; what was his answer to that?

A. When they were changing the cast, that's when they had blood and water. They put gauze on it before they can put the plaster around it.

By Mr. Gelpi

Q. Have you talked to Mr. Stahl before giving your deposition? A. No.

Q. He has not talked to Mr. Stahl at all before this morning? A. The day he come up here with the doctor, he come up here with the doctor.

Q. Have you ever talked to Mr. Stavis before this morning? A. He don't know, he don't know me.

Mr. Gelpi: That's all I have.

By Mr. Stahl

Q. Let me ask him a few questions. In answer to Mr. Gelpi's question, whether you would have any occasion to be in the United States other than when you were here with a ship, your answer was no, you would not; but isn't it so that you say you don't plan to leave the United States until your foot gets better and you are here now? A. He's going to stay here for his foot to heal; not to stay in America, not to stay in this country for any other reason, just 'til his foot gets better.

Q. You mention that you were on the dock ten minutes before the ambulance came, but how much time elapsed between the time the chain hit you and the ambulance came? A. He didn't have a watch to figure out what time it was. They took his shoe off, when he fell down they took his shoe off, and when they put him on the stretcher he asked them to take his sock off, and they took his sock off and the blood was squirting out; and then they took him on the dock, and ten minutes later the ambulance came.

Q. Wasn't it your answer before that about a half hour to an hour elapsed between the time of the accident 'til the ambulance came?

Mr. Gelpi: Object to the form of the question.

Go ahead.

A. He said about that. He didn't have a watch to say exactly that.

Mr. Stahl: And of that time, ten minutes was spent on the dock?

Mr. Gelpi: Object to the form of the question. Go ahead.

A. Yes.

By Mr. Stahl

Q. How long did it take for the ambulance to get to the hospital? A. A half hour. He don't have no time on him, but he figures about a half hour.

Q. Was the siren running on the ambulance when they took you to the hospital? A. Yes, it was blowing.

Q. All right. Have you been in pain during the time that we've been taking your deposition? A. Yes, it hurts.

Q. Is that the reason that you've been wincing?

Mr. Gelpi: I object to the form of the question.

A. Yes.

Mr. Stahl: I have nothing further.

Mr. Gelpi: I have nothing further.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

661
No.

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the
Fifth Circuit.

GEORGE F. WOOD,
510 Van Antwerp Building,
P. O. Box 2245,
Mobile, Alabama 36601,
Attorney for Petitioners.

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PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the
Fifth Circuit.

To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:

Petitioners, Hellenic Lines Limited and Universal Cargo Carriers, Inc., pray that a Writ of Certiorari be issued to review the Decision and Judgment of the United States Court of Appeals for the Fifth Circuit Court of Appeals in this cause, and specifically its opinion, unreported at this time, but which is annexed to this petition as Appendix A (App. p. A-1); and to the combined order denying Rehearing and Rehearing En Banc, annexed as Appendix B (App. p. A-14).

JURISDICTION.

The jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1254 (1).

The judgment of the Court of Appeals affirming the District Court was entered on May 8, 1969.

The combined order denying Rehearing and denying Rehearing En Banc was entered on July 3, 1969.

QUESTIONS FOR REVIEW.

I.

Were the lower courts correct in applying the Jones Act to an action by a Greek seaman, himself a resident of Greece, against a Greek corporate owner for injury occurring aboard a Greek flag vessel, solely on the ground that the majority stockholder of the corporate shipowner, although himself a Greek citizen, resided in the United States as a representative of Greece to the United Nations?

II.

Were the lower courts correct in finding that the Greek flag of the HELLENIC HERO was a "Flag of Convenience" when the corporation was formed in Greece, by Greek citizens, in 1934, has continued to exist with home offices in Greece since that time; when all stockholders are Greek citizens; when two of its four trade routes do not touch the United States; when all of its crewing takes place in Greece and only Greek seamen are employed and when most of its vessels call in Greece where they are supplied and repaired?

III.

Were the courts correct after making a determination that the Greek seaman (Plaintiff below) had a forum accessible to him in Greece to then add a second complete remedy under the Jones Act?

STATUTES INVOLVED.

The principal statute involved in this case is the Jones Act (41 Stat. 1007, 46 United States Code 688), which is set forth as follows:

“Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”

STATEMENT OF THE CASE.

Respondent (libelant below) was born in Greece, is a Greek national, at all pertinent times resided in Greece, and signed on the SS HELLENIC HERO in Heraclion (Iraklion) Greece for a voyage commencing in Greece and ending in Greece. The contract of employment is in the form prescribed by the government of Greece fol-

lowing negotiations with Greek unions and ratification by Greek shipowners. The employment of all Greek seamen by Greek vessels is pursuant to this same collective agreement between the unions and the shipowners.

Hellenic Lines Limited is and was the operator of the HELLENIC HERO at all pertinent times, and was the employer of Rhoditis. Title to the HELLENIC HERO is in Universal Cargo Carriers, Inc., a wholly owned Panamanian subsidiary of Hellenic Lines Limited.

Hellenic Lines Limited is a pre-World War II company organized in Greece in 1934 and has continued to own and operate vessels in several trades since that time. Some of its trade routes are to and from certain American ports; some do not touch American ports. All of its stockholders are Greek citizens including its majority stockholder, Pericles Callimanopoulos.

The HELLENIC HERO is, and always has been, duly registered as a Greek flag vessel and operated as such. She and her sister ships call regularly at Greek ports and employ Greek seamen only.

Respondent Rhoditis was injured aboard the HELLENIC HERO in the Port of New Orleans on August 3, 1965. He was initially treated for a period of less than two weeks in New Orleans and was returned to his home in Greece at the expense of owners. The remainder of his treatment and recuperation period took place in Greece. At the time of trial he was in Greece or sailing from Greek ports. Hellenic Lines Limited is domiciled in Greece, has a large office in Piraeus, Greece, is subject to the laws of Greece and stands ready to respond to the provisions of Greek law to the benefit of Rhoditis. As a matter of fact it has already partially responded in that all medical expenses have been paid by petitioner in Greece and a portion of the other benefits accruing under

Greek law have been paid by Hellenic Lines Limited and accepted by Rhoditis.

Pericles Callimanopulos is the majority stockholder of Hellenic Lines Limited; owning in his own name or beneficially through his son more than 95% of the stock of this corporation. Mr. Callimanopulos is a Greek national who was the organizer of Hellenic Lines in 1934. He has resided in the United States since 1945 as a resident alien; treaty trader; and, since 1963, as a representative of Greece to the United Nations. Respondent (libelant) below did not plead, nor seek to prove provisions of the Greek law covering an injury under the circumstances of this case. The shipowner (respondent below) filed a motion to dismiss in the District Court based upon the express ground that American law, including the Jones Act, did not apply to this situation and, libelant not having pleaded Greek law, there was no area of operation for the court. The motion was denied by the District Court and subsequently the District Court expressly ruled that the Jones Act was applicable to the circumstances of this case.

Issue was joined including a defense that raised the same question as had been raised on the motion to dismiss, i. e., that American law did not apply and libelant had not plead the provisions of the Greek law. The District Court entered a judgment for the libelant which was affirmed on appeal.

BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE.

This, of course, is the issue brought to this Honorable Court for review. Libelant (Respondent) contends that jurisdiction is founded under the Jones Act. Petitioner denies that any law of the United States was applicable to confer jurisdiction and that jurisdiction did not, in fact, exist.

ARGUMENT FOR GRANTING CERTIORARI.

I.

The Decision Below, Expressly and as a Matter of Law, Is in Conflict With That of the Court of Appeals for the Second Circuit in TSAKONITES v. TRANSPACIFIC CARRIERS CORPORATION, 368 F. 2d 426, cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434.

The Court of Appeals for the Fifth Circuit in its decision which forms the basis for this petition expressly recognized that the Court of Appeals for the Second Circuit had already entered a contrary decision on identical facts. In the reported opinion of the instant case (App. A. p. A-11) the Court sets out its deliberate rejection of the Second Circuit's decision in these words:

"We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles Callimanopulos and the plaintiff was a Greek seaman injured in a United States port). **Tsakonites v. Transpacific Carriers Corp.**, 2 Cir. 1966, 368 F. 2d 426, cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434."

The Court then proceeds to reject an effort to distinguish **Tsakonites** on what it described as a "tenuous ground" and enters its self-described conflicting decision:

"Casting such finite distinctions aside, we find we cannot accept the reasoning and conclusion of the **Tsakonites** majority."

Even had the Fifth Circuit, in this case, failed to characterize its decision as in conflict with the Second Circuit **Tsakonites** decision, there can be no doubt that it was, as

a matter of law. Both cases involved a Greek seaman signed on a bona fide Greek flag vessel operated by Hellenic Lines Limited in each instance and owned by a wholly owned subsidiary of Hellenic Lines Limited. In each case the seaman was a resident of Greece and was injured in a United States port. The status of the majority stockholder (Callimanopulos) was as a resident alien in the **Tsakonites** case whereas he has diplomatic status in the instant case. The questions of law were identical in that the seaman relied on the Jones Act and American Maritime law in each case and declined to plead or prove the Greek law. In both cases the defense was the same, i. e., the inapplicability of American law and failure to plead the law of Greece gave the District Court no area of operation, hence there was no jurisdiction of the subject matter.

The only difference in the **Tsakonites** case and **Rhoditis** was the result; the two circuits reaching conflicting conclusions. Hence, with respect, the writ prayed for here should issue to resolve the conflict.

The opinion in the **Tsakonites** case is annexed hereto as Appendix C.

II.

The Decision Below Is in Conflict with the Decision of This Court in **LAURITZEN v. LARSEN**, 345 U. S. 571 and With **McCULLOCH v. SOCIEDAD NACIONAL DE MARINEROS DE BRAZIL**, 372 U. S. 10.

The starting point for the resolution of all controversies involving application of American law to an action between foreign citizens for injury aboard ship is **Lauritzen v. Larsen**, 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953). In that case Your Honors placed reliance in three dominant elements used to determine what law

should be applied to such a situation. These were (1) the law of the flag; (2) the allegiance or domicile of the injured person; and (3) the allegiance of the defendant shipowner. Four other elements were considered in the **Lauritzen** case and accorded secondary importance. These were (a) Place of the Wrongful Act; (b) Place of Contract; (c) Inaccessibility of Foreign Forum; and (d) Law of the Forum.

Of all the elements set out by this Honorable Court in **Lauritzen**, both major and minor, the "law of the flag" was recognized as of paramount importance. There has been no indication of any departure from this "venerable and universal rule". Indeed, its value as the chief measuring stick was reaffirmed in **McCulloch v. Sociedad Naccional de Marineros de Brazil**, 372 U. S. 10, decided in 1963.

There have been instances, to be sure, when the "law of the flag" as the prime determinant has been overridden. This has occurred in two major categories; (1) when the injured seaman, although a foreign citizen, was a resident of the United States; and (2) in the so-called "flag of convenience" cases wherein the foreign flag was used to cover American citizens who were the real owners and operators of the vessel.

When the Court of Appeals for the Fifth Circuit in the instant case made use of the diplomatic residence of a Greek majority stockholder to override the "law of the flag" it was in conflict with the **Lauritzen** and **McCulloch** decisions. It erroneously concluded that the "ownership" of the **HELLENIC HERO** was "essentially American" despite the total absence of any American citizen, either corporate or individual, from any aspect of the matter. It cannot thus make of this case a valid "flag of convenience" exception to the paramount rule. Neither can it bring the case into the possible controlling effect of the

residence of the alien seaman in the United States; since Rhoditis was admittedly a resident of Greece. Instead it seeks to expand the third major element enunciated by this Court in **Lauritzen** (that of "allegiance of the shipowner") to include a foreign owner whose majority stockholder has diplomatic residence in the United States, although himself a citizen of Greece.

Indeed, the Court below asserts that the "seven talismen" of **Lauritzen** are "neither exclusive nor immutable" (App. A-p. A-6). It then seeks, in effect, to add an eighth element ("base of operations") to the tests enunciated by **Lauritzen** on the basis of a District Court opinion in the Second Circuit, **Pavlou v. Ocean Traders Marine Corp.**, S. D. N. Y. 1962, 211 F. Supp. 370, 325 (App. A. p. A-6). This is the same District Court which subsequently entered the **Tsakonites** decision, which, in turn, was affirmed on appeal.

With respect, such an extension and revision of the settled law as determined by this Honorable Court in **Lauritzen** and reaffirmed in **McCulloch** is contrary to those decisions and should be reviewed.

III.

This Decision Determines a Matter of Substantial Importance Relating to the Application of the Jones Act to an Area Beyond Its Purview. In So Doing It Extends the Benefits of American Law to Foreign Seamen on Foreign Flag Vessels as a Cumulative Remedy to That Provided by the Nation of the Ship's Flag.

Once again a litigant has sought to extend the benefits of the Jones Act to "any seaman" regardless of nationality or residence of the seaman or the citizenship of the shipowner. In making application of the Jones Act to the relationship between the foreign nationals here, the Court of Appeals extends the effect of the act beyond its pur-

view as determined in **Lauritzen** and in **Romero v. International Terminal Operating Co.**, 358 U. S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959). In the **Lauritzen** opinion the court points out that by long established usage statutes dealing with maritime matters, such as the Jones Act, "have been construed to apply only to areas and transactions in which the American law would be considered operative under prevalent doctrines of international law."

By long adopted principles the Jones Act has been held applicable to disputes between seaman and employer (1) when both are American; (2) when the employer is an American citizen or corporation, even though the seaman is a national of another country, **Bartholomew v. Universe Tankships**, 263 F. 2d 437; **Pavlou v. Ocean Traders, etc.**, 211 F. Supp. 320; **Southern Cross S. S. Co. v. Firipis**, 285 F. 2d 651; **Voyiatzis v. National Shipping and Trading Corp.**, 199 F. Supp. 920; and **Zielenski v. Empresa Hondurene de Vapores**, 113 F. Supp. 93; and (3) when the seaman is an American resident, regardless of citizenship, **Uravic v. F. Jarka Co.**, 282 U. S. 234; **The Gambera v. Bergoty**, 132 F. 2d 414.

The Fifth Circuit Court of Appeals now seeks to add a fourth category to include a foreign seaman against an owner whose majority stockholder, although a foreign national himself, resides in the United States even though his residence is a diplomatic one.

The Court of Appeals found that "there is uncontradicted testimony in the record to the effect that Zacharias (Rhoditis) could obtain relief through the Greek courts if he sought it. Upon this record, therefore, we cannot say that the Appellee lacks access to a foreign forum" (App. A. p. A-6). The testimony was equally uncontradicted that the Greek remedy is in the general form of compensation regardless of fault with punitive damages available in the event fault be found.

Thus, the Greek seaman is placed in the enviable position of having added to the sure compensation of his homeland, the more lucrative rewards of the Jones Act, should there be negligence, or of the general maritime law of the United States, should the vessel be seaworthy. The Court thus extends the purview of the Jones Act beyond its original and long established purpose in order to grant a second remedy to a foreign seaman, a benefit not enjoyed by the American seaman for whose benefit the statute was enacted.

This extension of the effect of the Jones Act is a matter of substantial importance and calls for review by this Honorable Court.

IV.

This Decision Usurps the Function and Authority of the Nation of the Vessel's Flag and Interposes the Laws of the United States in a Matter Wholly Between Greek Nationals.

It has long been established in the laws of nations that a sovereign should not seek to interpose its own laws between nationals of another flag unless the peace, tranquility or dignity of the interposing sovereign dictates or unless some "heavy counterweight appears". This accepted principle of international law was reiterated by this Honorable Court in *Lauritzen* when Your Honors quoted with approval from the earlier cases of *U. S. v. Flores*, 289 U. S. 134, 158 and *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 123:

"and so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done onboard which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or

the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the law of that nation or the interests of its commerce should require. . . . This is but a repetition of settled American doctrine."

"These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears."

In the **Lauritzen** case this Court goes further in this same vein to make clear that frequent commerce and contacts with United States ports are not sufficient to justify the United States in usurping the authority of the nation of the vessel's flag and the interposition of American law between foreign nationals:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard ship.

"But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."

The undisputed testimony in the instance case discloses that the majority stockholder resides in the United States and is a representative of Greece to the United Nations.

To make use of such diplomatic residence to oust the Greek law, which undeniably controls the relationship between the parties to this suit, and to interject the laws of the United States is a usurpation, without justification, of the function and authority of a sister nation. With respect, such a result calls for review of this matter by Your Honors.

CONCLUSION.

The decision of the Fifth Circuit of which the petitioners seek a review is in direct conflict with the Second Circuit. Further, the decision is contrary to the guides established by this Honorable Court, in *Lauritzen v. Larsen*, supra, for determining the application of law to disputes between foreign nationals. It has the further, and undesirable, effect of extending the reach of the Jones Act beyond that intended and results in the supplanting of the law of another nation by the laws of the United States in a matter which should be the sole concern of the sister nation.

For these reasons, petitioners respectfully pray that this writ be granted and the decision reviewed.

Respectfully submitted,

HELLENIC LINES LIMITED and UNI-
VERSAL CARGO CARRIERS, INC.,
Petitioners,

By: GEORGE F. WOOD,
GEORGE F. WOOD,
510 Van Antwerp Building,
P. O. Box 2245,
Mobile, Alabama 36601,
Attorney for Petitioners.

APPENDIX A.

In the
United States Court of Appeals
For the Fifth Circuit.

No. 25699.

Hellenic Lines Limited and Universal Cargo Carriers, Inc.,
Appellants,

versus

Zacharias Rhoditis,
Appellee.

1.
Appeal from the United States District Court for the
Southern District of Alabama. A

(May 8, 1969.)

Before Goldberg and Ainsworth, Circuit Judges, and
Spears, District Judge.

Goldberg, Circuit Judge: Sixteen years after *Lauritzen v. Larsen*¹ we must fish in somewhat turgid waters for its spawn in order to determine the applicability of the

¹ 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953).

Jones Act.² The question presented is whether or not the Jones Act applies so as to allow recovery to a Greek seaman who was injured in a United States port on a Greek-flag vessel owned and controlled by United States domiciliaries. We hold that the Jones Act applies and affirm the judgment of the district court.³

Zacharias Rhoditis, an illiterate Greek seaman, was injured aboard the S.S. HELLENIC HERO while the ship was docking at the Port of New Orleans. Seeking compensation for his injury, Zacharias brought suit under the Jones Act against the appellants, Universal Cargo Carriers, Inc., and Hellenic Lines, Ltd.⁴

The HELLENIC HERO, which flies the Greek ensign and is registered in the port of Piraeus, Greece, has multi-nation ties, but its ownership is essentially American. Technically, the ship is owned by a Panamanian corporation which in turn is owned by a Greek corpora-

² 46 U.S.C.A. § 688 (1958), the Jones Act, provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the commonlaw right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. . . ."

³ The district court's opinion is reported at 273 F. Supp. 248.

⁴ This suit originated as a libel under the general admiralty laws of the United States, *in rem* against the HELLENIC HERO and *in personam* against Universal Cargo Carriers and Hellenic Lines. After discovering that the appellants had substantial United States ties, Zacharias successfully moved to have the Jones Act applied. The suit under the Jones Act "is in personam against the ship's owner and not in rem against the ship itself." *Lauritzen v. Larsen*, *supra*, 345 U.S. at 574, 97 L.Ed. at 1263.

tion. However, ninety-five per cent of the stock of the Greek corporation is owned by two residents of the United States, and the corporation has its principal office in New York. Universal Cargo Carriers, the Panamanian corporation, is solely a holding company with no operational responsibilities in connection with the HERO. The real ownership and operational responsibilities are vested in Hellenic Lines, a corporation organized and existing under the laws of Greece. Hellenic is managed from a base in New York,⁵ and is owned almost entirely by Pericles Callimanopoulos and his son.

Pericles, although a Greek citizen, has resided in the United States since 1945. With a home in Greenwich, Connecticut, and an office in New York City, Pericles performed his duties as managing director of the corporation from the United States. Under Pericles' direction, the HERO engaged in regularly scheduled runs between various gulf ports of the United States and ports in the Middle East. The entire income of the HERO was from cargo either originating or terminating in United States ports.

Zacharias signed on the HERO in Heraclion, Greece. His contract of employment provides that Greek law and the Greek Collective Bargaining Agreement shall apply as between the employer and the crew, and that all claims arising out of the contract of employment shall be adjudicated exclusively by the Greek courts.

In the court below Universal and Hellenic directed their defense so that it was primarily a challenge to the court's jurisdiction over the subject matter. The district court held that it had jurisdiction and explained its result as follows:

⁵ The record reflects that the New York office of Hellenic Lines has seventy-five employees. Another corporate office, which is located in New Orleans, employs fifteen.

“Following the law announced in *Lauritzen vs. Larsen*, 345 U.S. 571, it would seem to us that the contacts in this case with this country are quite substantial. The Libelant was injured in the Port of New Orleans, Louisiana, aboard a vessel regularly engaged in a scheduled trade to and from the United States Gulf ports; the vessel and its controlling corporations are owned by a resident of the United States, having enjoyed his residence in this country in excess of twenty (20) years, and the operation was clearly managed, controlled and operated from this country. Under these facts, I hold that this Court has jurisdiction and that the Jones Act is applicable [cases cited].” 273 F.Supp. at 249-50.

The court then found that Zacharias' injury was the proximate result of the appellants' negligence and awarded damages in the amount of \$6,000.

The sole issue raised by this appeal is whether the facts at bar warrant the application of the Jones Act, which is the basis of the district court's assertion of jurisdiction. Both parties rely on the primogenial case of *Lauritzen v. Larsen*, 1953, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254, for what it says and for what it does not say. In *Lauritzen* the question was whether one Larsen, a Danish seaman negligently injured on board a ship of the Danish flag in Havana harbor, had a cause of action under the Jones Act. Larsen, while temporarily in New York, had joined the crew of this ship owned by a Danish citizen. He had signed ship's articles providing that the rights of crew members would be governed by Danish law and by the employer's contract with the Danish Seamen's Union. In holding that the Jones Act did not apply, the Supreme Court listed seven factors to be considered in answering the question of applicability: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured seaman; (4) allegiance of the defendant shipowner; (5) the place where the con-

tract of employment was made; (6) the inaccessibility of a foreign forum; and (7) the law of the forum.

If we were to weigh the seven immortal pillars of *Lauritzen* by merely counting contacts, the score would be three for Jones Act coverage, four against.⁶ The

⁶ The factors here pointing to Jones Act applicability are: (1) the seaman was injured in a United States port; (2) the defendant shipowner is a United States domiciliary and operates his shipping business from this country; and (3) the forum is a United States court. The contacts pointing the other way are: (1) the ship's flag is Greek; (2) the injured seaman is Greek; (3) the seaman's contract of employment was made in Greece; and (4) there is a foreign forum available to the injured seaman.

Zacharias, however, contends that the count should be the other way; four to three in favor of coverage. He argues that there is no foreign forum accessible to him because a Greek court could not exercise jurisdiction of his suit, notwithstanding the appellants' willingness to submit to Greek jurisdiction. In support of this contention the appellee cites *Bikos v. Miralago Compania Armadora, S.A.*, a 1962 case in which the Athens Court of Appeals refused to exercise jurisdiction in a case similar to the one *sub judice*. According to the appellee's brief, the *Bikos* case involved a tort claim by a Greek citizen against a Panamanian corporation which owned the Greek flag vessel on which the Greek plaintiff was injured. In holding that it was without jurisdiction over the controversy, the Athens court said:

"Foreigners come indeed under the jurisdiction of this country's courts, according to Article 126 of the Introductory Law to the Civil Code; they can sue or be sued in accordance with provisions in effect relating to jurisdiction, if such jurisdiction is among the general and specific jurisdictions mentioned in the Civil Procedure. But such jurisdiction of the Piraeus Court of First Instance or other domestic court or judge does not apply to the appellee foreign corporation, since * * * appellant's services to it, during the rendering of which he was injured, were rendered abroad."

In the court below the appellee did not introduce the *Bikos* opinion into evidence and made no effort to prove that it represented the law of Greece. Since it was not proved as a fact, we cannot take judicial notice of its holding. *Rowan v. Commissioner*, 5 Cir. 1941, 120 F.2d 515, 516; *In re Mylonas*, N.D. Ala. 1960, 187 F.Supp. 716, 721; 5 *Moore's Federal Practice* §43.09 (1968); 9 *Wigmore on Evidence* §2573 (1940). In *Black Diamond S.S. Corp. v. Stewart & Sons*, 1949, 336 U.S. 386, 397-98, 69 S.Ct. 622, 93 L.Ed. 754, 764, the Supreme Court instructs us:

"Since Belgian law may be enforceable by our courts, that law, having been pleaded, must be established. It is true that

immortal seven, however, are not to be so mechanistically applied. *Lauritzen* did not create a contact counting test.

Rather the Supreme Court intended the applicability question to be answered by "ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." 345 U.S. at 582; 97 L.Ed. at 1267. "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. . . . [T]he test is that 'substantial' contacts are necessary. And while . . . one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more than to say that in such a case the contact is so obviously substantial as to render unnecessary a further probing into the facts." *Bartholomew v. Universe Tankships, Inc.*, 2 Cir. 1959, 263 F.2d 437, 439, *cert. denied*, 359 U.S. 1000, 79 S.Ct. 1138, 3 L.Ed.2d 1030. Likewise, the seven talismen are neither exclusive nor immutable.⁷

this Court has on several occasions held international rules which had passed into the 'general maritime law' to be subject to judicial notice [cases cited]. But where less widely recognized rules of foreign maritime law have been involved, the Court has adhered to the general principle that foreign law is to be proved as a fact [cases cited]."

Moreover, there is uncontradicted testimony in the record to the effect that Zacharias could obtain relief through the Greek courts if he sought it. Upon this record, therefore, we cannot say that the appellee lacks access to a foreign forum.

⁷ In *Pavlou v. Ocean Traders Marine Corp.*, S.D. N.Y. 1962, 211 F.Supp. 320, 325, the court found an eighth contact worthy of consideration—the shipowner's base of operations:

"This court recognizes that the factor of base of operations was not emphasized by the Supreme Court in *Lauritzen v. Larsen*, 348 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953). However, the court does not interpret that decision as an at-

The Supreme Court clearly indicated that the immortal seven were not to be given equal weight and that their significance might vary from case to case. The Supreme Court ascribed little significance to the place of contract, to the inaccessibility of a foreign forum, and to the law of the forum. We shall do likewise. Moreover, in this case we find the domicile of the injured seaman to be unimportant. The factor said to be of "cardinal importance" is the law of the flag. "[T]he weight given to the ensign overbears most other connecting events in determining applicable law," and "it must prevail *unless some heavy counterweight appears*," [emphasis added]. 345 U.S. at 584-86, 97 L.Ed. at 1269. In this case we find that heavy counterweight: the HELLENIC HERO was for all commercial purposes owned and operated by a United States domiciliary.⁸

The HERO's flag is more symbolic than real as is evidenced by the fact that its operation and ownership ties are American, not Greek. Under these circumstances it

tempt by the Supreme Court to exhaust the factors which may be relevant. It is clear that there the court was only dealing with the circumstances which were present therein. Indeed, in the Bartholomew case, supra, at page 443 of 263 F.2d, the Court of Appeals of this Circuit interpreted the Lauritzen decision in this way. Further, persuasive authority exists to support the view that the base of operations of the persons directing the operations of the vessel is a factor making the Jones Act applicable."

We agree with *Pavlon* that courts should consider the location of the shipowner's base of operation in conjunction with the seven factors articulated in *Lauritzen*. Since New York was the principal office of Hellenic Lines, this factor points persuasively toward Jones Act applicability.

⁸ Since he has resided in the United States and maintains both his home and principal place of business here, Pericles is properly categorized as a domiciliary of this country. See *Mitchell v. United States*, 1875, 88 U.S. (21 Wall.) 310, 22 L.Ed. 584, 586. See also 28 C.J.S. §11(f) ("A change of domicile to another country does not involve or require a change of nationality or an intent to cast off all allegiance to the country of the former domicile.")

is fair to say that the HERO's flag is not due the same weight which *Lauritzen* gave to a more sturdy flag. Courts need not elevate symbols over reality. We therefore pierce the corporate veil and conclude that the HERO's flag is merely one of convenience.

Lauritzen itself recognized that courts are not bound by flags of convenience:

"It is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them." 345 U.S. at 587, 97 L.Ed. at 1270.

Our course through the corporate veil also has strong support in post *Lauritzen* cases:

"Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. [cases cited]. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See *Lauritzen*, 345 U.S. at page 587, 73 S.Ct. at page 930. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes can-

not serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act. [cases cited].” *Bartholomew v. Univekse Tankships*, *supra*, 263 F.2d at 442.

See also *Southern Cross Steamship Co. v. Firipis*, 4 Cir. 1960, 285 F.2d 651, *cert. denied*, 365 U.S. 869, 81 S.Ct. 903, 5 L.Ed.2d 859; *Pavlou v. Ocean Traders Marine Corp.*, S.D. N.Y. 1962, 211 F.Supp. 320; *Voyiatzis v. National Shipping & Trading Corp.*, S.D. N.Y. 1961, 199 F.Supp. 920; *Zielinski v. Empresa Hondurena de Vapores*, S.D. N.Y. 1953, 113 F.Supp. 93.

Most of the flag of convenience cases have involved ships whose owners were American citizens, not aliens domiciled in the United States as here. This distinction should make no difference because aliens residing in this country are, with rare exception, subject to the same commercial and tort laws as United States citizens. In *Leonhard v. Eley*, 10 Cir. 1945, 151 F.2d 409, 410, wherein a resident alien was held to be subject to our Selective Service laws, we read of the obligations owed by aliens residing on our shores:

“Aliens residing in the United States, so long as they are permitted by the government to remain therein, are entitled generally, with respect to the rights of person and property and to their civil and criminal responsibility, to the safeguards of the Constitution and to the protection of our laws. However, they may exercise only such political rights as are conferred upon them by law. Their duties and obligations, so long as they reside in the United States, do not differ materially from those of native-born or naturalized citizens. Equally with such citizens, for the rights and

privileges they enjoy, they owe allegiance to our country, obedience to our laws, except those immediately relating to citizenship, contribution to the support of our governments, state and national; and in war, they share equally with our citizens the calamities which befall our country; and their services may be required for its defense and their lives may be periled for maintaining its rights and vindicating its honor."

The financial responsibility for compensating injured seamen is much less onerous than the personal sacrifice an alien makes when he serves in our military. This being true, it follows that a corporation owned by resident aliens should be subject to the Jones Act just as much as a corporation owned by United States citizens. Hellenic Lines and Universal Cargo Carriers are commercially domiciled in this country and therefore owe fealty to our laws.

The American character of this tort is further emphasized by the fact that Zacharias' injury occurred in the Port of New Orleans. This alone would not be sufficient to invoke the Jones Act. *Romero v. International Terminal Operating Co.*, 1959 358 U.S. 354, 381-84, 79 S.Ct. 468, 3 L.Ed.2d 368, 387-89. It is however, a countervailing factor which weakens our bondage to the flag. When combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability. In *Southern Cross Steamship Co. v. Firipis*, *supra*, 285 F.2d at 655, we read:

"[T]he effective control of the vessel was by American interests. This, coupled with the fact that the injury occurred while the ship was in drydock in an American port and with the ship's Hondurian registration being illusory, is sufficient under the doctrine of *Lauritzen v. Larsen*, *supra*, for the application of the Jones Act."

We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles and the plaintiff was a Greek seaman injured in a United States port). *Tsakonites v. Transpacific Carriers Corp.*, 2 Cir. 1966, 368 F.2d 426, cert. denied, 386 U.S. 1007, 87 S.Ct. 1348, 18 L.Ed.2d 434. The appellee attempts to distinguish *Tsakonites* on the tenuous ground that at the time of *Tsakonites*' accident Pericles had not met the residence requirements for United States citizenship, whereas in our case Pericles had fulfilled that eligibility requirement at the time of Zacharias' injury. Casting such finite distinctions aside, we find that we cannot accept the reasoning and conclusion of the *Tsakonites*' majority. Instead we find our haven in the persuasive logic of Judge Waterman's dissent from which we shall quote *in extenso*:

"United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U.S.C. §688 application, when American-based ship-owners who are United States citizens have sought the protection from seamen's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here [cases cited]. I would hold that here, in this case, where the injury occurred at dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him. I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States

resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596, 73 S.Ct. 472, 97 L.Ed. 576 (1953). Moreover, the duties and obligations of a resident alien have not been thought to 'differ materially from those of native-born or naturalized citizens.' *Leonhard v. Eley*, 151 F.2d 409, 410 (10 Cir. 1945). To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see, e.g., *Leonhard v. Eley*, *supra*, suggest that any United States law, such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

"So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United

States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

"I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vessels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territorial waters, a permanently resident alien should also be so liable." 368 F.2d at 429-30.

We hold that the district court correctly found that it had jurisdiction to apply the Jones Act. The power of the flag is not limitless, and its cloth should not be stretched beyond realistic and reasonable lengths. Maritime allegiance is not to be defined in a patriotic, nationalistic, or chauvinistic sense, but in terms of economic ties. The HERO and its owners were not strangers wandering to our shores. Not only did most of the HERO's nautical peregrinations call for United States docking, but its ownership also rested here. The alienage of Pericles and his corporate entourage is clearly much less factual than fictional. We respect the inviolability of Pericles' choice of sovereignty, but not his choice of law.

AFFIRMED.

APPENDIX B.

In the
United States Court of Appeals
For the Fifth Circuit

No. 25699

Hellenic Lines Limited and
Universal Cargo Carriers, Inc.,
Appellants,
versus
Zacharias Rhoditis,
Appellee.

Appeal from the United States District Court for the
Southern District of Alabama

On Petition for Rehearing and Petition
for Rehearing En Banc

(July 3, 1969)

Before Goldberg and Ainsworth, Circuit Judges,
and Spears, District Judge.

Per Curiam: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX C.

United States Court of Appeals
For the Second Circuit.

No. 288—September Term, 1965.

(Argued March 23, 1966 Decided November 16, 1966.)

Docket No. 29734.

Elias Tsakonites, Plaintiff-Appellant,

v.

Transpacific Carriers Corp. and Hellenic Lines, Ltd.,
Defendants-Appellees.

Before:

Lombard, Chief Judge,
Waterman and Moore, Circuit Judges.

Appeal by a Greek seaman injured on board a Greek vessel in the United States from a dismissal of his claim under the Jones Act, 46 U. S. C. §688, by the United States District Court for the Southern District of New York, Irving Ben Cooper, Judge.

Herbert Lebovici, New York, N. Y. (Harold D. Safir, Lebovici and Safir, New York, N. Y., on the brief), for plaintiff-appellant.

Edwin K. Reid, New York, N. Y. (George D. Byrnes, Zock, Petrie, Sheneman & Reid, New York, N. Y., on the brief), for defendants-appellees.

James M. Estabrook, David P. H. Watson, Haight, Gardner, Poor & Havens, New York, N. Y., for Kingdom of

Greece, the Union of Greek Shipowners and the Chamber of Shipping of Greece, as amici curiae.

Moore, Circuit Judge:

Plaintiff, a Greek seaman, brought suit in the Southern District of New York, relying entirely upon the Jones Act and the general maritime law of the United States. The District Court dismissed the case on the merits on the grounds that plaintiff had failed to establish the applicability of American law. From this judgment plaintiff appeals.

The sole question presented on this appeal is whether the Jones Act, 46 U. S. C. §688, and the general maritime law of the United States apply to an accident in an American port to a foreign seaman on a ship owned by a foreign corporation and flying a foreign flag, where the principal shareholder of the foreign corporation, though a foreign citizen, resides in America, and where the operations of the ship on which the injury occurred were controlled from this country.

Elias Tsakonites, a Greek citizen and domiciliary, the plaintiff-appellant, signed on as a member of the crew of the *SS Hellenic Spirit* under an agreement dated Piraeus, Greece, June 4, 1959, which provided that any claim arising from his employment was to be tried exclusively by the Greek law courts. Plaintiff boarded the *Hellenic Spirit* on June 5, 1959, at Herakleion, Crete. The ship was then on the outward leg of a voyage from Houston, Texas, to Rangoon, Burma, with numerous stops in between. After reaching Burma, the ship sailed back through the Red Sea and the Mediterranean, stopping at New York and Philadelphia before finishing its inward voyage in Cuba. The accident which gave rise to the present suit occurred while the *Hellenic Spirit* was berthed at a pier in Brooklyn. On September 26, 1959, while descending a ladder from the main deck to the interior of a hold, plaintiff fell to the

deck below. He was taken to the Lutheran Medical Center in Brooklyn, where he remained until January 20, 1960.

The *Hellenic Spirit* at all times relevant to this suit sailed under the Greek flag and was registered under the laws of Greece. Her crew and officers were almost entirely Greek. She was owned by the defendant Transpacific Carriers Corp., a Panamanian corporation wholly owned by the defendant Hellenic Lines, Ltd., a Greek corporation, over 96% of the shares of which were owned by Pericles G. Callimanopoulos, a Greek citizen, who first came to this country in 1945. From 1945 to 1956 or 1957, he spent part of his time here, first as a visitor, then as a treaty trader. In 1956 or 1957, he was admitted to the United States as a permanent resident.

With the exception of Callimanopoulos and his son, all of the officers and directors of Hellenic Lines reside in Greece as well as being Greek citizens. However, the directors from time to time vested in Callimanopoulos a broad power of attorney to run the company as General Manager.

Hellenic Lines maintains an office in Piraeus and a slightly smaller office in New York City, in addition to smaller offices in this country and abroad. In August 1959, the New York office employed 63 people at a payroll cost of approximately \$28,000 per month. The company's annual statement was prepared in New York. Hellenic Lines maintains bank accounts in New York banks and has borrowed extensively from New York banks.

Hellenic Lines at the time of the accident operated from New York 22 or 23 vessels engaged in three liner services: to the Mediterranean; to the Persian Gulf; and to the Red Sea and India and Burma. The company's agents at ports of call reported to the New York office on all matters concerning these three liner services. The *Hellenic Spirit* was engaged in the Red Sea liner service.

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The starting point of any discussion of the applicability of American law to seaman's accidents must be *Lauritzen v. Larsen*, 345 U. S. 571 (1953), in which the Supreme Court listed and appraised seven factors which should be considered in balancing the need for fairness to a plaintiff and the legitimate interest of the United States against the policies underlying international comity. Those seven factors are: the place of the wrongful act—a factor to which the Supreme Court attributed little weight, because of the disruptive effects adherence to such a standard would have upon the uniform regulation of shipboard activities;¹ the law of the flag, which factor, the Supreme Court said, must prevail in the absence of some "heavy counterweight", and which generally accords with principles of comity; the allegiance or domicile of the injured party; the allegiance of the defendant shipowner; the place and terms of the contract; the relative inaccessibility of the foreign forum, a factor which the Court found relevant not on the issue of which law is applicable but rather on whether the court after finding its own law inapplicable should apply the law of some other jurisdiction; and finally the law of the forum, to which the Court attributed very little weight.

Lauritzen did not attempt to indicate whether or not American law should apply under all combinations of listed factors not before the Court. Cases both before and after *Lauritzen*, however, have established that certain com-

¹ See *Romero v. International Term. Co.*, 358 U. S. 354, 384 (1959):

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country. The amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury."

binations of factors either are or are not enough to justify application of American law. See Note, Admiralty Choice of Law: *Lauritzen v. Larsen* Applied, 47 Va. L. Rev. 1400 (1961).

The present case presents a combination of factors the significance of which is not conclusively established by existing cases. Defendants contend, and the trial court held, that the record reveals no factors "establishing a connection with the United States . . . sufficient to outweigh the 'venerable and universal rule'" which gives cardinal importance to the law of the flag, *Tjonaman v. A/S Glittre*, 340 F. 2d 290, 292 (2d Cir.), cert. denied, 381 U. S. 925 (1965). Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the *Hellenic Spirit* be said to be a "flag of convenience," within the meaning of cases like *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437, 440 (2d Cir.), cert. denied, 359 U. S. 1000 (1959), and *Southern Cross SS Co. v. Firipis*, 285 F. 2d 651 (4th Cir. 1960), cert. denied, 365 U. S. 869 (1961). The *Hellenic Spirit* had contacts with Greece apart from being registered there and flying its flag. It stopped there to pick up crews, and not infrequently to discharge cargo. The officers and directors of the company which owned the ship were Greek, as were all of the shareholders of the parent company Hellenic Lines. Greece certainly has enough contacts with the ship so that our courts should hesitate out of considerations of comity before applying and foisting upon it the heavy potential liabilities of the American law of maritime personal injuries. Cf. *McCulloch v. Sociedad Nacional de Marineros de Brazil*, 372 U. S. 10 (1963) (National Labor Relations Act does not apply to maritime operations of ships owned by foreign.

subsidiaries of American corporations, crewed by alien seamen).

In favor of jurisdiction are the facts that plaintiff was injured here and spent almost four months in an American hospital; that the headquarters of the ship's activities were located here; and that the general manager and 96% shareholder, although a Greek citizen, is a permanent resident here. The few courts which have previously passed upon the problem have attached considerable significance to the base of business operations, see *Southern Cross SS Co., supra*, and *Pavlou v. Ocean Traders Marine Corp.*, 211 F. Supp. 320, 322 (S. D. N. Y. 1962) (provision in contract between Greek seaman and Liberian corporation owned by Greeks, Canadians and Americans, stating that Greek law governs), as well as to the residence of the ultimate owners, *id.* But cf. *Cruz v. Harkna*, Admiralty No. 176-315, S. D. N. Y., Feb. 24, 1954 (Honduran law applies despite fact that some of the ship's owners, all of whom were Estonian refugees, resided in America).

Wherever, as here, there are various factors to be weighed for and against jurisdiction, the decision must be controlled by the more weighty. This court in its recent *Tjonaman* decision, *supra*, faced a similar problem and resolved it against jurisdiction in our courts. The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance. Also not to be ignored, is the fact that this Greek seaman whose residence is in Greece, who is or is not presumed to be familiar with the rights and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be subject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American

seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: "These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs." International comity, requires respect for such agreements.

Although plaintiff argued here that his right to a jury trial was violated by the district judge deciding the case on the basis of stipulated facts, we think it was clear that he agreed to have the issue of the application of United States law decided on the stipulations.

Dismissal affirmed.

Waterman, *Circuit Judge* (dissenting):

I respectfully dissent.

To me the present case presents a combination of factors that justifies the application of United States law rather than the municipal law of another nation. To be sure, the suit has been brought by a Greek alien seaman injured while serving aboard a vessel of foreign registry and ownership. But the accident occurred in the territorial waters of the United States while the S.S. Hellenic Spirit was berthed at the 57th Street pier, Brooklyn, New York. Furthermore, Hellenic Lines, Ltd., the foreign shipowner, has a substantial executive office in the United States, from which extensive ship operations are conducted. And, in my view, it is of the greatest importance that Callimanopoulos, the general manager of Hellenic Lines and the owner of more than 95% of Hellenic Lines stock, has regularly re-

sided in the United States since 1945 and has enjoyed the status of a permanent resident alien here since 1956 or 1957.

United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U. S. C. §688 application, when American-based shipowners who are United States citizens have sought the protection from seaman's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here. E.g., *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437 and cases cited at 442 (2 Cir.), *cert. denied*, 359 U. S. 1000 (1959). I would hold that here, in this case, where the injury occurred at dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him.¹ I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See *Kwong Hai Chew v. Golding*, 344 U. S. 590, 596 (1953). Moreover, the duties and obligations of a resident alien have not been thought to "differ materially from those of native-born or naturalized citizens." *Leonhard v. Eley*, 151 F. 2d 409, 410 (10 Cir. 1945).

¹ In the present case the fact that the defendant, Hellenic Lines, Ltd., is incorporated in Greece does not successfully disguise the fact that the corporation is almost solely owned by a single individual and that that individual is a resident alien in the United States. This case does not involve the applicability of our law to a corporation publicly owned by many individuals permanently residing in several different countries or even in one such country.

To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see e.g., *Leonhard v. Eley*, *supra*, suggests that any United States law, such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly-situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vessels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territorial waters, a permanently resident alien should also be so liable.

I find no reported case denying a seaman his recovery in which the significant factors are enough similar to this case to require us to affirm the order below. In major part I agree with the exhaustive discussion of the authorities in the majority's opinion. Unlike the majority, however, I am not persuaded that here the ship had enough contacts with Greece so that we should hesitate "before applying and foisting upon [Callimanopoulos] the heavy potential liabilities of the American law of maritime personal injuries."

I would reverse the order below dismissing the action and remand for further proceedings.

APPENDIX D.

**United States Court of Appeals
For the Fifth Circuit.**

October Term, 1968.

No. 25699.

D. C. Docket No. 3165—Admiralty.

**Hellenic Lines Limited and Universal Cargo Carriers, Inc.,
Appellants,**

versus

**Zacharias Rhoditis,
Appellee.**

**Appeal from the United States District Court for the
Southern District of Alabama.**

**Before Goldberg and Ainsworth, Circuit Judges, and
Spears, District Judge.**

Judgment.

**This cause came on to be heard on the transcript of the
record from the United States District Court for the
Southern District of Alabama, and was argued by counsel;**

**On Consideration Whereof, It is now here ordered and
adjudged by this Court that the judgment of the said
District Court in this cause be, and the same is hereby,
affirmed;**

**It is further ordered that appellants pay to appellee,
the costs on appeal to be taxed by the Clerk of this Court.**

Issued as Mandate: July 11, 1969.

May 8, 1969

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IN THE

Supreme Court of the United States

OCTOBER 1969 TERM

No. 661

HELLENIC LINES LIMITED

and

UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

AMICUS CURIAE MOTION AND BRIEF IN SUPPORT
OF PETITION FOR WRIT OF CERTIORARI

JOHN R. SHENEMAN

Attorney for Amicus Curiae

Greek Chamber of Shipping

and

The Union of Greek Shipowners

19 Rector Street

New York, N. Y. 10006

EDWIN K. BEID

GEORGE D. BYRNES

Of Counsel

IN THE
Supreme Court of the United States

OCTOBER 1969 TERM

No. *f*

HELLENIC LINES LIMITED

and

UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

**MOTION FOR LEAVE TO FILE THE ACCOMPANY-
ING BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI IN THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT**

Statement of Interest of *Amicus Curiae*

John R. Sheneman of Zock, Petrie, Sheneman & Reid, New York, New York, a member of the bar of this Court and the attorney for The Union of Greek Shipowners and Greek Chamber of Shipping respectfully moves this Court for leave to file the accompanying brief *amicus curiae*, in support of the writ of certiorari on behalf of the petitioners.

The S/S Hellenic Hero, a Greek flag vessel registered under Greek law, was operated and controlled by Hellenic

Lines Limited, a 35 year old Greek Corporation all of whose stockholders are Greek citizens. Plaintiff, also a Greek citizen, was a resident and domiciliary of Greece and was employed and boarded said vessel at Greece under a Greek Collective Agreement which dictated submission of shipboard disputes to exclusive Greek Court jurisdiction and exclusive Greek law and contemplated payment to seaman, in the event of injury, of benefits under the Greek law in accordance with the Greek social welfare programs.

The Union of Greek Shipowners, incorporated under Greek law in 1923 with a head office at Athens, is open to membership of Greek owners of vessels of over 4,500 deadweight tons. It has a membership of 175, owning over 6,000,000 gross tons registered under the Greek flag. It is the most representative of Greek owners. The Panhellenic Seamen's Federation, is a Greek corporation consisting of the various Maritime Trade Unions, i.e. the Unions of Masters; Radio officers; Engineers of Internal Combustion Engines; Sailors, Firemen; Stewards and Ship's Cooks. It is the most representative of Greek seamen. Every Collective Agreement, including the one in the present case, is one bargained for and concluded by The Union of Greek Shipowners and the Panhellenic Seamen's Federation. Every Collective Agreement, including the one in the instant case, is approved by the Greek Minister of Mercantile Marine and has the effect of Greek law, binding on owners, masters, officers and crew of all Greek vessels of over 4,500 deadweight tons, even though the shipowner or the master, officers and seamen be not members of The Union of Shipowners or the Panhellenic Seamen's Federation. Thus, The Union of Greek Shipowners and the Panhellenic Seamen's Federation work together to conserve and maintain the primacy of Greek Court jurisdiction and Greek law abroad Greek owned Greek flag vessels. In addition, The Union of Greek Shipowners' interest extends to attend-

ance at International Conferences on questions of safety of human life at sea and the rendition of opinions to the Greek Government on such matters.

The Chamber of Shipping of Greece, a Greek corporation established some 40 years ago with a principal office at Athens, is a judicial person in the area of public law. Its members include all the owners of Greek flag ships, irrespective of size, kind or tonnage, totalling 3001 owners and about 10,364,687 gross tons. It is principally a consultative organization. It advises the Greek Ministry of Mercantile Marine and private industry on shipping, including all questions of seamen employment and labor aboard Greek flag ships. It prepares all kinds of legal and administrative measures affecting ships and shipping, conducts arbitrations of maritime disputes, is represented at International Conferences on shipping, such as safety of human life at sea, load-lines, ship design and equipment, bills of lading, oil pollution, nuclear cargo and insurance, freight rates, conference practices, port development, trade and development, legislation; and publishes a Bulletin quarterly in which shipping questions are discussed. Like The Greek Union of Shipowners and the Panhellenic Seamen's Federation, it has a vital interest that Greek law and the jurisdiction of the Greek Courts, preserved in the Collective Agreements, should exclusively govern personal injury disputes and all other disputes affecting the internal economy and discipline of Greek owned Greek flag vessels.

We respectfully submit that the accompanying brief will perhaps lay more pointed emphasis, than will the immediate parties to this petition, on the assault made below on the concept of international comity as reflected by the venerable and universal rule of maritime law which gives cardinal importance to the law of the flag in the determina-

tion of disputes with respect to the internal economy and discipline of a vessel and the effect of such an assault on the vital interest of a foreign government in, perhaps, its most productive element of commerce.

For the foregoing reasons it is respectfully prayed that this Honorable Court accept the accompanying brief
Amicus Curiae.

Respectfully,

JOHN R. SHENEMAN
of Zock, Petrie, Sheneman & Reid
19 Rector Street
New York, New York 10006

IN THE
Supreme Court of the United States

OCTOBER 1969 TERM

No.

HELLENIC LINES LIMITED,

and

UNIVERSAL CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

**BRIEF OF AMICUS CURIAE GREEK CHAMBER OF
SHIPPING AND THE UNION OF GREEK SHIPOWNERS**

Question Presented

The question presented is whether the Jones Act, 46 U. S. C. 688, and the general maritime law of the United States apply to an accident to a Greek seaman on board a ship operated by a Greek corporation and flying a Greek flag solely on the grounds that the accident occurred in an American port, that the principal shareholder of the ship operating corporation, though a Greek citizen, was a resident in America and that the operations of the ship on which the injury occurred were controlled from Amer-

ica,—in view of the numerous and substantial contacts of the vessel, the vessel operator and the plaintiff, himself with Greece, the country of the flag of the vessel, to wit:

(a) that the crewing of the subject vessel and all vessels operated by said corporation takes place in Greece and only Greek seamen are employed,

(b) that most of the vessels operated by said corporation call at Greek ports where they are supplied and repaired.

(c) that two of the four trade routes operated by said corporation do not even touch the United States.

(d) that said corporation was founded in Greece in 1934 by Greek citizens and has continued to exist with home offices in Greece since that time.

(e) that all the stockholders of said corporation are Greek citizens.

(f) that the majority stockholder of said corporation resides in the United States as a representative of Greece to the United Nations.

(g) that the plaintiff seaman is a resident and domiciliary of Greece and has access to a Greek forum.

(h) that the plaintiff seaman signed an employment contract in Greece limiting his rights exclusively to Greek Court jurisdiction and Greek law.

Statement of the Case

The controlling facts in this case are not disputed. For the purpose of this brief we adopt petitioners' statement of facts set out in petitioners' application for the writ of certiorari. The pertinent facts are as set forth in the question noted under the proceeding heading.

ARGUMENT

The writ of certiorari should be granted.

Conflict Between Circuit Courts

The Fifth Circuit's decision in the instant case is in direct and utter conflict with the decision of the Second Circuit in *Tsakonites v. Transpacific Carrier Corporation*, 368 F. 2d 426, 2 Cir. 1966, cert. denied 386 U. S. 1007, annexed as petitioner's Appendix C. In both cases the operative facts were identical and the legal issues were the same. The Fifth Circuit expressly recognized this conflict in its opinion:

"We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles and the plaintiff was a Greek seaman injured in a United States port). *Tsakonites v. Transpacific Carriers Corp.*, 2 Cir. 1966, 368 F. 2d 426, cert. denied, 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434. The appellee attempts to distinguish *Tsakonites* on the tenuous ground that at the time of *Tsakonites*' accident Pericles had not met the residence requirements for United States citizenship, whereas in our case Pericles had fulfilled that eligibility requirement at the time of *Zacharias*' injury. Casting such finite distinctions aside, we find that we cannot accept the reasoning and conclusion of the *Tsakonites*' majority."

Importance of Question Presented

In determining this petition, the Court need not review factual issues, as the operative facts are not in dispute. What is under inspection is the manner in which the

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Fifth Circuit weighed and evaluated these facts against the backdrop of international relations and comity.

The Fifth Circuit pierced the corporate veil of the Greek ship operating company and found that the major stockholder of that corporation, although a Greek citizen, was a resident of the United States. Coupling this residency with the finding of American base of operations of the vessel on which the injury occurred, the Court held that the Greek status of both the ship operating corporation and the flag of the vessel, was sham with the effect that both the corporation and the flag were American. The Fifth Circuit, in so deciding, completely ignored the substantial Greek contacts, not only the offending vessel, the operating company, but of the plaintiff himself, which contacts have been set forth herein under the question presented. It is respectfully submitted that these contacts show that the Hellenic Hero and the ship operating corporation had significantly more than formal business contacts with Greece. Consequently, how could that corporation and the flag of that vessel be considered *non bona fide* and illusory? Be that as it may, no court, other than the Fifth Circuit, has, in a Jones Act situation, pierced a foreign corporate veil to characterize stock ownership and finding same to be non American, gone beyond that by considering stockholder residency or any other matter. While the cases * relied on by the Fifth Circuit teach that beneficial ownership and control of a vessel by *American Citizens or Corporations* will be given absolute legal significance despite schemes, however complex or imaginative,

* *Bartholomew v. Universe Tankships*, 2 Cir. 1959, 263 F. 2d 437, cert. denied 359 U. S. 1000. See also *Southern Cross Steamship Co. v. Firipis*, 4 Cir. 1960, 285 F. 2d 651, cert. denied, 365 U. S. 869; *Pavlou v. Ocean Traders Marine Corp.* S. D. N. Y. 1962 211 F. Supp. 320; *Voyiatzis v. National Shipping & Trading Corp.*, S. D. N. Y. 1961, 199 F. Supp. 920; *Zielinski v. Empress Hondurena de Vapores*, S. D. N. Y. 1953, 113 F. Supp. 93.

to avoid American laws through the formalities of foreign registration and operation, they do not sanction the Fifth Circuit's disregard of the legal significance of ownership and control by admitted *foreign citizens*. Such a process of disregard, it is submitted, is more than a trivial slight to the principles of international comity and to the sensibilities of a foreign sovereign.

In aid of its blatant disregard of admitted foreign citizenship, the Fifth Circuit, as noted above, alludes to the finding that the Hellenic Hero was controlled from an American base of operations. The concept of American "base of operation" was, however, considered by this Court in *Lauritzen v. Larsen* (1953) 345 U. S. 571 and given no heed. Respondent there had put stress on the assertion that the petitioner's commerce and contacts with the United States were frequent and regular, thus sustaining a basis for applying the Jones Act. This Court responded that (345 U. S. at 581).

"... (T)he virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limits of its powers, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international commerce by sea. Hence the courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."

Moreover, maritime law

"... in such matters as this does not seek uniformity . . . (I)t aims at stability and order through usages which considerations of comity, reci-

proximity and long-range interest have developed to define the domain each nation will claim as its own." (345 U. S. at 582).

The idea of doing business in or with the United States is essentially one of fragmented location of that part of foreign commerce between nations.

No case has recognized or held that unequal bargaining power among sovereigns and their nationals or an advantageous trade position of one over the other is a justifiable test or contact to be found or considered in the application of the Jones Act.

The exclusion of such consideration is the recognition that it would be unfair to foreign sovereigns to take their unequal bargaining power or lack of advantageous trade position into account, because at this point in the history, the United States maintains an unequal bargaining power and an advantageous trade position with foreign sovereigns. There was a time, not too many years removed, where the reverse of this situation was true, insofar as the United States was concerned. At that time, foreign sovereigns did not place themselves in a superior position to the United States; at this time the United States has followed the pattern, conduct and courtesy of sovereign powers of recent years.

The severity and international complications of a view contrary to the above cannot be underestimated. The great merchant fleets, passenger and cargo, of sovereign powers trade continuously, systematically and substantially with all the major and minor ports of the United States. Concomitant with this trading, they maintain extensive offices, carry on extensive solicitations and carry on substantial business and financial operations in the United States, indeed far greater than the petitioners here.

Are we to say to the Cunard Line, French Line, Italian Line, Holland-American Line, and others "You are, in effect, American citizens and domiciliaries by reason of your activities in the United States: that you are subject to our laws without reference to your own laws"? These questions answer themselves.

The Fifth Circuit ascribed little significance to the place of contract. This Court did likewise in *Lauritzen v. Larsen*, *supra*, where the place of contract was New York. This Court, however, in *Lauritzen* did say that a law stipulated in a seaman's employment contract should be accorded significance when that law is the same law as the flag of the vessel, this Court stating, at page 345 U. S. 589:

"... the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flagstate as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. *The Belgenland*, 114 US 355, 367, 29 L ed 152, 156, 5 S Ct 860; *The Hanna Nielson* (DC NY) 273 F 171. We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship."

In this regard, the Second Circuit in *Tsakonitis*, *supra*, on the same facts as before the Fifth Circuit, stated:

"Also not to be ignored, is the fact that this Greek seaman whose residence is in Greece, who is or is not presumed to be familiar with the rights

and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be subject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: 'These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen, in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs.' International comity requires respect for such agreements."

In the instant suit it is clear that it was the intent of the parties as the natural result of their Greek citizenships that Greek law should govern their relationship on a Greek flag vessel. Thus it is submitted that where there is conformity between the law referred to in the contract of employment with what would otherwise be applicable law, the stipulated law is of importance and it has significance in favor of the law of the flag to be applied to the transaction.

Conclusion

It is submitted that the Fifth Circuit's summary disregard of the sanctity of foreign citizenship, both corporate and individual, has rendered an affront to the principles of international comity and to the sensibility of a foreign sovereign. Further, the Fifth Circuit's lack of deference to the nationality of the flag of the Hellenic Hero has not only cast doubt upon the standard upon which the legitimacy of

foreign flags should be judged, but also has jeopardized the most vulnerable and universal rule of Maritime Law which gives cardinal importance to the law of the flag, which rule this Court has said in *Lauritzen*, and recently resaid in *MacCulloch v. Sociedad Nacional d. Marineros de Brazil* (1963) 372 U. S. 10 (not mentioned by the Fifth Circuit), should be given paramount importance with respect to matters affecting the internal economy and discipline of vessels. The drastic consequences of the Fifth Circuit's decision is all the more heightened by the reality that the Second Circuit, on identical operative facts, has come to a diametrical opposed result, a result which upholds the sanctity of foreign citizenship and flag and thus a result which comports with principles of international comity. It is respectfully submitted that this divergent result is one ripe for resolution by this Court.

Dated: New York, N. Y.
this 1st day of October, 1969.

Respectfully submitted,

By JOHN R. SHENEMAN

ZOCK, PETRIE, SHENEMAN & REID,
*Attorneys for Amicus Curiae
Greek Chamber of Shipping and
The Union of Greek Shipowners.*

EDWIN K. REID,
GEORGE D. BYRNES,
Of Counsel.

Certificate of Service

This is to certify that on the 2nd day of October 1969 copies of the above Application to Appear as Amicus Curiae and Brief in support thereof have been forward to:

George F. Wood of Pillans, Reams, Tappan, Wood & Roberts, Attorney for Petitioners, Hellenic Lines, Limited and Universal Cargo Carriers, Inc., whose consent to file this application has been obtained at his office and post office address, 510 Van Antwerp Building, P. O. Box 2245, Mobile, Alabama 36601.

Joseph B. Stahl, Attorney for Respondent, Zacharias Rhoditis, whose consent has not been obtained, at his office and post office address, Baronne Building, New Orleans, Louisiana 70112.

JOHN R. SHENEMAN

OCT 7 1969

SUPREME COURT, U. S.

Supreme Court of the United States

October Term, 1969

No. 661

**HELLENIC LINES LIMITED and UNIVERSAL CARGO
CARRIERS, INC.,**

Petitioners,

against

ZACHARIAS RHODITIS,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**MOTION OF THE ROYAL GREEK GOVERNMENT
FOR LEAVE TO FILE A BRIEF AS AMICUS
CURIAE AND BRIEF THEREOF**

JAMES M. ESTABROOK

*Counsel for the Royal Greek Government
as Amicus Curiae*

80 Broad Street

New York, N.Y. 10004

DAVID P. H. WATSON

of Counsel

Supreme Court of the United States

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HELLENIC LINES LIMITED and,
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Petitioners,

against

ZACHARIAS RHODITIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION OF THE ROYAL GREEK GOVERNMENT FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Royal Greek Government hereby moves this Court for leave to file a brief *amicus curiae* in this case on petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit. The consent of the attorney for the petitioners has been obtained. The consent of the attorneys for the respondent has been requested, but refused.

The Royal Greek Government has an interest in this case in the following respects:

1. As the authority granting Greek registration to m/s Hellenic Hero.
2. As the authority authorizing m/s Hellenic Hero to fly the Greek flag.

3. As the authority granting incorporation under the Greek law to Hellenic Lines Limited as far back as 1934.

4. As the government of the nation of which respondent was both a citizen and a domiciliary.

5. As the government which approved the terms of the Collective Bargaining Agreement between the seaman and the shipowner, which Collective Bargaining Agreement was incorporated by reference in the hiring articles and contract of employment.

6. As the government of the laws referred to by the terms of the hiring articles and the Greek Collective Bargaining Agreement.

The decision of the United States Court of Appeals for the Fifth Circuit undermines the Greek flag and Greek registration of m/s Hellenic Hero and applies the Jones Act (46 U.S. Code, § 688) to a personal injury sustained aboard that vessel by a Greek member of the crew, thereby diminishing the authority of the Greek Government over the vessel and her owners and operators.

The Royal Greek Government is concerned because the decision of the Court below varies substantially from the earlier rulings of this Court on the subject of choice of law applicable to a maritime tort, as set forth in *J. Lauritzen v. Larsen*, 345 U.S. 571 (1953), and *Romero v. International Terminal Operating Co. et al.*, 358 U.S. 354 (1959). The decision of the Court below is also in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit based on almost identical facts in *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

In its brief *amicus curiae* the Royal Greek Government presents the position, not of the Greek respondent who has been held entitled to recover under United States law for his

injury, not of the owners and operators of the Greek vessel who find themselves subject now to a multiplicity of laws, but of the government to which both respondent and the vessel are subject whose authority has been diminished through the application of foreign law to matters relating solely to the internal economy and discipline of the vessel.

The brief of the Royal Greek Government as *amicus curiae* reflects the concern of that Government that its responsibility for the vessels flying its flag and registered under its laws not be diminished, and that its citizens who serve aboard its vessels shall have recourse to the provisions of Greek law covering safety aboard vessels, prompt and adequate medical treatment, and compensation in accordance with the Greek law referred to in the hiring articles irrespective of where the ship might be at the time an injury might occur to a crew member.

The brief *amicus curiae* of the Royal Greek Government reflects as well its concern for the Court below having held that the presence of the Greek flag vessel in a port of the United States at the time of the injury was a factor pointing to application of United States law. The Royal Greek Government sees in that holding a threat to its efforts to achieve uniformity of application of law irrespective of the national or international waters on which its vessels may be sailing.

Respectfully submitted,

JAMES M. ESTABROOK

*Counsel for the Royal Greek Govern-
ment as Amicus Curiae*

80 Broad Street

New York, N.Y. 10004

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STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE ROYAL GREEK GOVERNMENT AS AMICUS CURIAE

The interest of the Royal Greek Government in this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit would seem to be self-evident. M/s Hellenic Hero was a vessel flying the Greek flag, registered in Greece in accordance with Greek law, and operated by Hellenic Lines Ltd., the petitioner, a Greek corporation, all of whose officers and directors are Greek citizens. The injured seaman respondent was both a citizen of Greece and a resident of Greece. In addition, the respondent signed his articles and contract of employment in Greece, which contract called for application of the Greek Collective Bargaining Agreement and Greek law.

The particular concern of the Royal Greek Government arises from the decision of the United States Court of

Appeals for the Fifth Circuit stating that "the Hero's flag is more symbolic than real" and "that the Hero's flag is merely one of convenience."

These findings, which led to the overall conclusion that the Jones Act (46 U.S. Code § 688 *et seq.*) and the general maritime law of the United States should be applied, are in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit in a virtually identical case—*Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

Additionally, the decision below would seem to be in direct conflict with *J. Lauritzen v. Larsen*, 345 U.S. 571 (1953), where at page 584 it was stated:

"Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state."

ARGUMENT

Guidelines for determining the weight to be ascribed to what Circuit Judge Goldberg below termed the "seven immortal pillars" are amply set forth in *J. Lauritzen v. Larsen*, 345 U.S. 571 (1953). The decision of the United States Court of Appeals for the Fifth Circuit has not followed these guidelines in arriving at its conclusion that the Jones Act should be applied.

The decision of the United States Court of Appeals for the Fifth Circuit ascribes undue weight to the injury having occurred aboard the vessel while she was in a United States port. Circuit Judge Goldberg states that

"The American character of this tort is further emphasized" by that fact. He states that this "weakens our bondage to the flag", and that "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability".

Yet, *J. Lauritzen v. Larsen, supra*, substantially eliminated the particular location of the vessel as having any influence on the choice of applicable law. At 345 U.S. 583 it was stated:

"The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate."

Later, at page 584 of 345 U.S., this Court added:

"But the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag."

Further comments upon the weight to be ascribed to this factor are found in *Romero v. International Terminal Operating Co., et al.*, 358 U.S. 354 (1959). In the *Romero* case the injury had occurred aboard the vessel while she was in the Port of New York. The *Larsen* injury had occurred in the Port of Havana. Mr. Justice Frankfurter commented upon the weight to be ascribed to the situs of the tort at 358 U.S. 384:

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country."

The clear holdings of the *Larsen* and *Romero* cases are that the law of the place where the vessel happens to be at the time of the shipboard injury should not be given weight. But the decision of the United States Court of Appeals for the Fifth Circuit as to which petitioner seeks a review has ascribed weight to this factor. A reading of the opinion indicates that the decision might have gone the other way had not the injury occurred while the vessel was in the Port of New Orleans. The inequity of such an approach to the conflicts of law question should be patent. Is the choice of law to be applied to a shipboard injury to a crew member going to be influenced by the location of the vessel? The decisions of this Court tell us that it should not.

We respectfully submit that the Fifth Circuit has erred in eliminating the significance of Mr. Justice Jackson's third factor—Allegiance or Domicile of the Injured, by stating that: "We find the domicile of the injured seaman to be unimportant." In fact, the Greek citizenship and domicile of Zacharias Rhoditis, who signed the hiring agreement calling for application of Greek law and employment subject to the Greek Collective Bargaining Agreement in Heracleion, Greece, to serve aboard the Greek flag vessel, registered in Greece, indicates that the seaman respondent was no stranger to the service for which he was engaged, and there is a strong presumption that he entered upon his employment without illusions. The same might not be said had the seaman by reasons of his citizenship and domicile been a complete stranger to the flag, to the port of registration, to the place of sign-on, and to the law referred to in the hiring articles.

The consideration given by the United States Court of Appeals for the Second Circuit to the injured seamen's citizenship and domicile in *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007, is noteworthy. This was the case, of course, where the United States Court of Appeals for the Second Circuit

reached a diametrically opposite conclusion from that reached by the Court below in this *Rhoditis* case. Circuit Judge Moore, writing for the majority, stated:

"Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the *Hellenic Spirit* be said to be a 'flag of convenience,' within the meaning of cases like *Bartholomew v. Universe Tankships Inc.*, 263 F.2d 437, 440 (2d Cir.), cert. denied, 359 U.S. 1000 (1959), and *Southern Cross SS Co. v. Firipis*, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869 (1961)."

Should not the Greek citizenship and domicile of Rhoditis be at the very least an indicator further emphasizing the non-American character of the tort, which when combined with the other non-American contacts would point to the inapplicability of the Jones Act? *J. Lauritzen v. Larsen*, *supra*, does not hold that the nationality and domicile of the injured man are of no significance, for at 345 U.S. 587, it was stated:

"His [the Danish seaman] presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another."

The holding of the Fifth Circuit also flies in the face of the following comments by Mr. Justice Jackson bearing on the nationality of the plaintiff and the form of articles signed (345 U.S. 588-9):

"Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of

the flag-state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied."

Finally, the holding below would seem to be in conflict with *J. Lauritzen v. Larsen*, *supra*, in that the Court had failed to ascribe to the flag of the vessel the weight it was properly due. Sixteen years after *J. Lauritzen v. Larsen*, *supra*, it would hardly seem necessary to state that the law of the flag is *the* factor. Mr. Justice Jackson stated that "cardinal importance" was to be given to the law of the flag (345 U.S. 584), that "the weight given to the ensign overbears most other connecting events in determining applicable law (345 U.S. 585), and that the law of the flag should be applied "unless some heavy counterweight appears" (345 U.S. 586).

It should not be assumed that the Greek flag and the Greek registration of Hellenic Hero were lightly given. Hellenic Lines Ltd. was organized as a Greek corporation in 1934. All of its stockholders and directors and officers are citizens of Greece. The vessels call regularly at Greek ports. Only Greek seamen are employed on the various vessels including Hellenic Hero.

The Court below negates the weight and cardinal importance to be given to the flag by pointing to the domicile of the majority stockholder who, though concededly a Greek citizen, is a domiciliary of the United States. This fact prompts the Court below to hold that the Greek flag was "more symbolic than real" and "merely one of convenience". We submit that in looking at the overall operation any flag *other* than the Greek flag would be one of convenience and mere symbolism.

Furthermore, the Court below has ascribed undue weight to the more or less frequent calls of the various vessels in

one of the Hellenic Line services at ports of the United States.

It has never been held by this Court that the validity of the flag or registration of the vessel should be vitiated through engagement in foreign and international commerce with regular calls at United States ports. The consequence of such calls was discussed in *J. Lauritzen v. Larsen* at 345 U.S. 581:

“Respondent places great stress upon the assertion that petitioner’s commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.”

To hold otherwise would be to jeopardize the flags of vessels engaged in regular foreign commerce. For example, are we to question the validity of the flag of a United States vessel which calls as often at Southampton, England, as it does at New York? Conversely, must we question the flag of a foreign vessel which calls as often at the Port of New York as it does at its home port of Southampton?

In holding that the Jones Act and the General Maritime Law of the United States apply to an injury sustained

aboard the Greek flag vessel the Court of Appeals has failed to follow the directives of this Court as set forth in *J. Lauritzen v. Larsen, supra*, and *Romero v. International Terminal Operating Co., et al., supra*.

CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be granted.

Respectfully submitted,

JAMES M. ESTABROOK

*Counsel for the Royal Greek Government,
as Amicus Curiae*

80 Broad Street

New York, N.Y. 10004

DAVID P. H. WATSON
of Counsel

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OCTOBER TERM, 1969

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versus

ZACHARIAS RHODITIS,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
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FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI AND
BRIEFS OF AMICI CURIAE IN SUPPORT
THEREOF

JOSEPH B. STAHL
804 Baronne Building
305 Baronne Street
New Orleans, Louisiana 70112
ATTORNEY FOR RESPONDENT

ROSS DIAMOND, JR.
Van Antwerp Building
P. O. Box 432
Mobile, Alabama 36601
Of Counsel

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BRIEFS OF AMICI CURIAE IN SUPPORT
THEREOF.**

ARGUMENT AGAINST GRANTING CERTIORARI

IF IT PLEASE THIS HONORABLE COURT:

I.

**THERE IS NO CONFLICT, AS TO ANY
MATTER OF LAW, BETWEEN THE FIFTH
CIRCUIT'S DECISION IN THE INSTANT CASE*
AND THE SECOND CIRCUIT'S DECISION IN
THE TSAKONITES CASE.**

Whether the Jones Act, 46 U.S.C. §688, is applicable to this controversy is a pure question of fact. The writer of the annotation "Jones Act-Foreign Vessels" at 84 A.L.R. 2d 906, digesting all the cases cited by Petitioners and many more, observes:

"* * * the test of applicability of the Jones Act cannot be delineated *except* by reference to specific *factual* situations." 84 A.L.R. 2d 906, 907. (Emphasis supplied.)

In *Bartholomew v. Universe Tankships, Inc.* (2 Cir. 1959) 263 F.2d 437, the court described the decisional process in this type of case as involving

"* * * the ascertainment of the *facts* or *groups of facts* which constitute contacts between the transaction involved in the case and the United States." 263 F. 2d 437, 441. (Emphasis supplied.)

And again:

"The *facts* either warrant the application of the Jones Act or they do not." 263 F. 2d 437, 443. (Emphasis supplied.)

*(S.D. Ala. 1967) 273 F. Supp. 248, affirmed (5 Cir. 1969) 412 F.2d 919.

In *Tsakonites v. Transpacific Carriers Corp.* (S.D.N.Y. 1965) 246 F. Supp. 634, affirmed (2 Cir. 1967) 368 F. 2d 426, cert. den. (1967) 386 U.S. 1007, 18 L. Ed. 2d 434, 87 S. Ct. 1348, the case upon which Petitioners rely to establish the existence of a conflict with the Fifth Circuit's decision in the instant case, the District Court for the Southern District of New York based its decision exclusively on this principle:

"Plaintiff has chosen to stand on American law. We thus direct our attention to the *basic issue* of whether there are sufficient *facts* before this Court to justify the application of American Law." 246 F. Supp. 634, 636. (Emphasis supplied.)

Respondent takes this Court's denial of certiorari in the *Tsakonites* case as mere recognition that its outcome below depended exclusively on a determination of facts.

The type of conflict between circuit courts of appeals contemplated as a reason for granting certiorari by Rule 19 (1)(b), 28 U.S.C. Rules of Supreme Court, is as to matters of law, not as to conclusions which depend upon an appreciation of facts and circumstances which admit of different interpretations. Cf. *Bandini Petroleum Co. v. Superior Ct.* (1931) 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103; *General Trading Co. v. State Tax Comm.* (1944) 322 U.S. 335, 349, 88 L. Ed. 1309, 1319, 64 S. Ct. 1028, 1030; *Milk Wagon Drivers Union v. Meadowmoor Dairies* (1941) 312 U.S. 287, 715, 85 L. Ed. 836, 1145, 61 S. Ct. 552, 803; *Fox Film Corp. v. Muller* (1935) 296 U.S. 207, 80 L. Ed. 158, 56 S. Ct. 183; *United States v. Jefferson Electric Mfg. Co.* (1934) 291 U.S. 386, 78 L. Ed. 859, 54 S. Ct. 443; *Lewellyn v. Electric Reduction Co.* (1927) 275 U.S. 243, 72 L. Ed. 262, 48 S. Ct. 63;

Federal Trade Com. v. American Tobacco Co. (1927) 274 U.S. 543, 71 L. Ed. 1193, 47 S. Ct. 663. That this principle applies to the type of Jones Act suit under consideration was specifically recognized by this Court in *Lauritzen v. Larsen* (1953) 345 U.S. 571, 97 L. Ed. 1254, 73 S. Ct. 921, where, after citing similar cases which had reached opposite results, it noted in Footnote No. 3 that

(" * * * their contrary results do not necessarily mean inconsistency." 345 U.S. 571, 573, 97 L. Ed. 1263, 73 S. Ct. 921, 924.

Accordingly, Respondent submits that the instant case does not create the kind of conflict between circuits that might serve as a reason for granting certiorari.

II.

AS A MATTER OF LAW THE JUDGMENTS OF THE DISTRICT COURT AND THE FIFTH CIRCUIT IN THE INSTANT CASE ARE SUS- TAINED BY THE EVIDENCE.

Respondent recognizes that this Court will examine a record to ascertain whether as a matter of law the findings below are sustained by the evidence; *Chicago G.W.R. Co. v. Rambo* (1936) 298 U.S. 99, 80 L. Ed. 1066, 56 S. Ct. 693, reh. den. 298 U.S. 692, 80 L. Ed. 1409, 56 S. Ct. 945. The conclusions drawn from the evidence in the case at bar by Petitioners and their Friends, in their Briefs before this Court (as to: A. the diplomatic immunity of Petitioners' owner; B. the availability to Respondent of a cumulative remedy in Greece; C. the significance of Respondent's

employment contract; D. the significance of Petitioner Hellenic Lines, Ltd.'s incorporation in Greece; and E. the interest of the Greek Government in the internal order of Petitioners' vessel), would, if believed, point so alarmingly toward a re-examination of the Record, that Respondent sees fit to demonstrate the complete erroneousness of these conclusions separately, as follows:

A.

**MR. CALLIMANOPOULOS, OWNER OF
THE PETITIONER CORPORATIONS, HAS
NEVER ENJOYED DIPLOMATIC IMMUNITY IN
THE UNITED STATES.**

Petitioners assert that the evidence established that their owner, Mr. Pericles Callimanopoulos, enjoys diplomatic immunity in the United States, which Respondent concedes would, if true, absolutely exempt him from allegiance to the United States, from subjection to its laws, and from the presumption of domicile attaching to his continuous residence here; and they argue that the District Court and the Fifth Circuit erred in disregarding this supposed immunity and in treating him as an ordinary resident alien. However the only evidentiary basis for their assertion is the District Court testimony of their Insurance and Claims Manager, Mr. Gerald Hennesey of New York City, that Mr. Callimanopoulos has merely been a member of the Greek Delegation to the United Nations since 1963 (R. 114-116).

Diplomatic immunity is a political question, involving such delicate relations between the United States and

friendly powers that the courts of this country properly refuse to accept as conclusive any other evidence whether a particular person enjoys it than a determination thereof by the executive branch of our government; *Trost v. Tompkins* (Mun. Ct. App. Dist. Col. 1945) 44 A. 2d 226 (in which the Assistant Commissioner for Shipping and Immigration of the Royal Yugoslav Government, engaged here in representing the interests of his government before the "Inter-Allied Shipping Pool", employed and supervised by the Yugoslav Ambassador to the United States and provided by the latter with an office in the Yugoslav Embassy Building in Washington, D.C., was held, on the say-so of the executive branch, not diplomatically immune here).

The Chief of Protocol of the Department of State and his Assistants make the determination of immunity on behalf of the executive branch, and their rulings only are binding on the courts; *Arcaya v. Paez* (D.C.N.Y. 1956) 145 F. Supp. 464, affirmed (2 Cir. 1957) 244 F. 2d 958. The only members of foreign nation delegations to the United Nations who enjoy diplomatic immunity in the United States are the envoys extraordinary and ambassadors and ministers plenipotentiary; Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations, § 15, P.L. 357, 80th Congress, 1st Session, Joint Res. Aug. 4, 1947, ch. 482, 61 Stat. 756, 762. Their employees may never have capacity to assert diplomatic immunity in their own behalf, the intervention of the recognized representative of the nation involved being absolutely required; *Trost v. Tompkins, supra*; *Agency of Canadian Car & Foundry Co. v. American Can Co.* (2 Cir. 1919) 258 F. 363. When a diplomat whose mission is terminated, instead of returning to his own country remains and

engages in business here he forfeits any immunity he may have enjoyed; *Ex parte Hiltz* (1884) 111 U.S. 766, 28 L. Ed. 592, 4 S. Ct. 698. Our courts recognize that diplomatic visas are frequently issued as a matter of courtesy and refuse to consider them as establishing diplomatic immunity; *U. S. v. Coplon* (D.C.N.Y. 1950) 88 F. Supp. 915. Even consuls, vice consuls and trading consuls, in all that concerns their trade, are subject to the laws of the United States in the same way as native merchants are; *Hall v. Coppel* (1868) 7 Wall. (U.S.) 542, 19 L. Ed. 244; *De Leon v. Walters* (1909) 163 Ala. 499, 50 So. 934.

The foregoing authorities abundantly support the District Court's and the Fifth Circuit's failure to mention a word about Petitioners' assertion of Mr. Callimanopoulos' diplomatic immunity, on which so much of their Argument for Certiorari is now pitched, seeing that their assertion is based on nothing more than the weightless and insufficient testimony of Petitioners' own Mr. Hennesey.

Letters appended hereto, of the Department of State and of the United States Mission to the United Nations, conclusively resolve this issue against Petitioners. In support of the propriety of appending these letters at this stage, Respondent cites, ironically, *Hellenic Lines, Ltd. v. Moore* (U.S. App. Dist. Col. 1965) 345 F. 2d 978, in which the Court of Appeals, obviously at the appellate stage of the proceedings, requested and obtained from the Department of State the information as to the diplomatic immunity of the Tunisian Ambassador to the United States upon which it based its decision; Footnote No. 3, 345 F. 2d 978, 980.

Respondent annexes hereto as Appendix A-1 a facsimile reproduction of a letter of determination of Mr. Harold A.

Pace, Assistant Chief of Protocol, Department of State of the United States, dated February 15, 1968, stating that Mr. Callimanopoulos has never been accredited to the United States in any capacity as a diplomatic officer of the Greek Government; and as Appendix A-2 a facsimile reproduction of a letter of Bess N. Trinks, the Privileges and Immunities Officer of the United States Mission to the United Nations, dated April 1, 1968, stating that Mr. Callimanopoulos has no representative status or other connection with the Permanent Mission of Greece to the United Nations.

Respondent further notes that: Mr. Callimanopoulos has lived here, managing Petitioners, since 1945 (Libellant (Respondent)'s Ex. 3 (Deposition of Callimanopoulos) pp. 5-6); he did not mention any diplomatic status since 1963 in his Deposition, taken on January 10, 1964, though closely questioned about the purpose of his residence here (Respondent's Ex. 3, pp. 5-6); and not a word about his vaunted diplomatic status appears in the Record of or the numerous briefs filed in the *Tsakonites* case, cited *supra*, from 1965 through 1967 during its progress through every level of the United States Courts, or in the Brief on behalf of the Royal Greek Government as *Amicus Curiae* submitted in the instant case.

In any event the Fifth Circuit based its decision in the instant case not only on Mr. Callimanopoulos' status as a resident alien here but also on the fact that the Petitioner corporations are commercially domiciled here; 412 F. 2d 919, 924-925.

B.

PETITIONERS ARE INCOMPETENT TO CREATE THE LEGAL EXISTENCE OF A "CUMULATIVE REMEDY" IN ANOTHER JURISDICTION BY FOLLOWING RESPONDENT THERE AND STUFFING A LITTLE MONEY INTO HIS POCKETS BEHIND HIS LAWYERS' BACKS, NOR DOES RESPONDENT'S ACCEPTANCE OF SUCH MONEY PRECLUDE RECOVERY UNDER THE JONES ACT.

The Fifth Circuit specifically observed that both sides of this litigation failed to adduce sufficient evidence to prove whether the law of Greece affords Respondent a remedy, and, accordingly, that Court conceded its inability to either reject or accept the proposition that he lacks access to a foreign forum; Footnote No. 6, 412 F. 2d 919, 922.

Petitioners argue however that Respondent's acceptance of "money under Greek law" from them when he returned to Greece after his institution, through counsel, of these Jones Act proceedings in the District Court, establishes that a remedy under Greek law is available to him, and that to now grant him relief under the Jones Act here would unfairly subject them to cumulative liabilities. The only hint of any pertinent thrust in this argument, as it might apply to the granting of certiorari in this case, seems to be in the direction of a concept of election of remedies, and if this is what it is, it is badly taken, for this Court has made it clear that accepting benefits upon which the payor has attempted to stamp the label of one substantive remedy does not amount to an election

precluding subsequent formal pursuit of another, the inquiry in the case of the formally pursued remedy always remaining one of its intrinsic applicability *vel non*, irrespective of the previous acceptance by the claimant of other benefits; *Pacific S.S. Co. v. Peterson* (1928) 278 U.S. 130, 73 L. Ed. 220, 49 S. Ct. 75 (acceptance of admiralty maintenance and cure and wages held not an election precluding subsequent proceedings for Jones Act damages); *Pritt v. W. Va. N.R. Co.* (W. Va. 1948) 132 W. Va. 184, 51 S.E. 2d 105, cert. den. (1949) 336 U.S. 961, 93 L. Ed. 1113, 69 S. Ct. 891 (acceptance of state workmen's compensation benefits held not an election precluding subsequent proceedings for Jones Act damages); and *Calbeck v. Travelers Ins. Co.* (1962) 370 U.S. 114, 8 L. Ed. 2d 368, 82 S. Ct. 1196 (acceptance of state workmen's compensation benefits held not an election precluding subsequent proceedings for federal Longshoremen's and Harborworkers' Compensation benefits).

The *Pacific S. S. Co.*, *Pritt* and *Calbeck* cases cited *supra* do indicate that where subsequent recovery under another remedial law is forthcoming, either the party having accepted the gratuitous benefits must give them back or the payor is entitled to credit for them against such subsequent recovery, but none of those cases involved tender and acceptance of benefits to the prejudice of an attorney's privilege. Unusually severe judicial criticism was levelled at this practice among Greek label shipowners of bypassing plaintiffs' counsel in *Katopodis v. Liberian S/T OLYMPIC SUN* (E.D. Va. 1968) 282 F. Supp. 369, and there is no question but that Petitioners' behavior here violates with striking faithfulness every line of the pattern of conduct denounced in that case

(except that here Petitioners did not obtain a release of liability from Respondent). It does not seem unfair to leave Petitioners with the consequences of their own bad faith in this regard.

C.

THE TERMS OF RESPONDENT'S WORK CONTRACT DO NOT AFFECT THE QUESTION OF JONES ACT APPLICABILITY.

Respondent finds the translation of his employment contract furnished by Petitioners (R. 18-20) to be misleadingly free and incomplete, and accordingly appends its original as Appendix B-1 for translation at this Court's order in accordance with Rule 37, 28 U.S.C. Rules of Supreme Court.

Respondent points to the contract's identification of the party of the first part, translated by Respondent as follows:

1. CONTRACTING PARTIES

- a) The Master or the legal representative of the Master or Vessel Owner
of the S/S, M/S, or M/V HELLENIC HERO
of the Vessel Owner "HELLENIC LINES" LTD.

It is obvious that there was nondisclosure of the name of the registered owner of the vessel, the Panamanian corporation Petitioner Universal Cargo Carriers, Inc. The contract therefore never became binding in any way as between Respondent and Petitioner Universal, as no man

can be compelled, despite nondisclosure in a contract, to deal under that contract with persons with whom he does not wish to deal; *Arkansas Valley Smelting Co. v. Belden Min. Co.* (1888) 127 U.S. 379, 32 L. Ed. 246, 8 S. Ct. 1308; *Roof v. Morrison*, 37 Ill. App. 37; *Boston Ice Co. v. Potter*, 123 Mass. 28. That this nondisclosure is material insofar as it affects choice of law cannot be disputed.

Respondent further calls attention to the contract's provisions as to applicable law and jurisdiction, which are dealt with in the paragraphs thereof translated by Respondent as follows:

APPLICABLE LAW AND JURISDICTION

This contract shall be governed solely and exclusively by the Laws of Greece and the Greek Collective Agreements.

It is further agreed that any claim or dispute flowing from this *maritime hiring engagement or contract*, or howsoever based directly or indirectly on this contract, or based directly or indirectly on any labor or job classification served on the vessel by the seaman, shall be adjudged and adjudicated solely and exclusively by the Courts of Greece. (Emphasis supplied.)

The Brief submitted herein by the Union of Greek Shipowners and the Greek Chamber of Shipping as *Amici Curiae* shows that the Greek Collective Agreements, upon which this contract is based and to which the Greek Courts are to advert for the resolution of seamen's disputes, are a series of agreements arrived at by collective bar-

gaining between the Union of Greek Shipowners and the Panhellenic Seamen's Federation (Brief of Union of Greek Shipowners and Greek Chamber of Shipping as *Amici Curiae*, pp. 2-3). These collective bargaining agreements, as their very name implies, are addressed to no more than matters of the manning scales, wages, hours and conditions of work, standards of accommodations and pensions applicable to different types of maritime work. Interpreted in this light it is clear that the contract's words, "disputes . . . based on any labor or job classification served on the vessel by the seaman," refer to no more than contract disputes relative to such matters; tort suits for injuries are not mentioned, and certainly the rule of narrow interpretation of the instrument's vague clauses against its writer would seem to apply. And self-evidently, a Jones Act suit is for tort, not for enforcement of anything due under a contract or for damages for its breach.

In any event, the question in the instant suit would still remain, as always in suits of this type, that of the intrinsic applicability *vel non* of the Jones Act, regardless whether this contract were construed as relating also to tort controversies, since no contract, rule, regulation or device whatsoever is competent to abrogate a shipowner's liability under the Jones Act; 45 U.S.C. §55, incorporated into the Jones Act by reference, 46 U.S.C. §688.

D.

THE ORIGINAL INCORPORATION OF PETITIONER HELLENIC LINES, LTD. IN GREECE IN 1934 HAS BEEN A MATTER OF INSIGNIFICANCE SINCE ITS IMMIGRATION INTO NEW YORK CITY IN 1945.

The District Court found below that Petitioner Hellenic's owner has been managing Hellenic continuously since 1945 in New York City, where it has its principal offices and where all its ships are operated. Moreover the record in the *Tsakonites* case, cited *supra*, discloses that this Petitioner obtains all its financing from a New York bank. Petitioners insist however that the law of the incorporating nation rather than that of the forum should apply. In *Mansfield Hardwood Lumber Co. v. Johnson* (5 Cir. 1959) 268 F. 2d 317, 321, the court applied the law of the forum to a corporation rather than the law of the incorporating state, holding that such contacts of the corporation with the forum state as residence of parties and actors, and conduct therein of the corporation's principal business, outweigh the naked fact of incorporation elsewhere. Respondent submits that Petitioner Hellenic's incorporation in Greece has become similarly remote and insignificant by virtue of its wholesale transimplantation over into New York City.

E.

**PETITIONERS AND THEIR FRIENDS HAVE
FAILED TO PROVE ANY INTERNATIONAL OR
OTHER LAW CONFERRING ON THE GREEK
GOVERNMENT A LEGITIMATE INTEREST IN
OR RIGHT TO REGULATE THE INTERNAL
ORDER OF A PANAMANIAN PERSON'S
SHIP.**

Mr. Callimanopoulos has taken the trouble to insert a Panamanian corporation as registered owner not only between himself and the S/S HELLENIC HERO but between that vessel and the nation of its flag. Rank speculation has no place in this Brief, but Respondent cannot but wonder over Mr. Callimanopoulos' distrust of the sudden confiscatory policies of an ever-changing Greek Government. In any event he has also seen fit since 1960 to refer disputes between Petitioner Hellenic and Petitioner Universal for disposition in accordance with the Arbitration Law of the State of New York (R. 41). Certainly his scrambling up of a United States domicile and base of operations with Panamanian ownership, New York arbitration law and a Greek flag has already done more to disrupt the internal order of the S/S HELLENIC HERO than application of the Jones Act to this transaction could accomplish. Cf. *Kyriakos v. Goulandris* (2 Cir. 1945) 151 F. 2d 132, in which the Court observed that application of the Jones Act to a controversy involving a Greek flag vessel owned by a Panamanian corporation

“* * * would not invade the (vessel's) internal economy * * * further than has already been

done * * * 151 F. 2d 132, 138. (Parentheses added.)

Petitioners complain that denial of certiorari in the instant case would have the confusing consequence of leaving them subject to the Jones Act in the Fifth Circuit and to Greek law in the Second Circuit. Respondent points out that Petitioners have utterly forsaken their espoused loyalty to Panama in bypassing all question of the applicability of Panamanian law, which provides for benefits to seamen very similar to those provided by the Jones Act and the admiralty jurisprudence of the United States; cf. *Rodriguez v. Gerontas Cia. de Nav., S.A.* (S.D.N.Y. 1957) 150 F. Supp. 715, affirmed (2 Cir. 1958) 256 F. 2d 582 and *Morewitz v. S.S. MATADOR* (4 Cir. 1962) 306 F. 2d 144. Thus it is apparent that Petitioners' scrambling up of their national ties underscores a quest on their part to avoid all law but the most remote and the least onerous. The confusion in which they now find themselves is exactly what they have bargained for, and to be left there is exactly what they deserve.

III.

REBUTTAL OF AMICUS BRIEFS

A.

BRIEF OF THE ROYAL GREEK GOVERNMENT AS AMICUS CURIAE

This *Amicus* Brief displays a patent lack of fidelity to the language of the Fifth Circuit's Opinion in this case by

misrepresenting it. It refers to the Fifth Circuit as having decided this case solely on the basis of the tort's occurrence in the United States; accuses it of having totally disregarded Respondent's Greek citizenship; and blames it for overlooking the law of the vessel's Greek flag solely because Mr. Callimanopoulos lives in the United States. Reference to the Fifth Circuit's Opinion shows that that Court specifically rejected the place of the tort as a solely determinative factor (412 F. 2d 919, 924-925); expressly recognized that Respondent is a Greek citizen (412 F. 2d 919, 920 & Footnote No. 6, 922) and stated this was not important in view of the weightier facts of United States contacts (412 F. 2d 919, 923); and overlooked the law of the vessel's Greek flag because it is owned and operated from a principal place of business in the United States. (412 F. 2d 919, 923).

B.

BRIEF OF THE UNION OF GREEK SHIPOWNERS AND GREEK CHAMBER OF SHIPPING AS AMICI CURIAE

The Greek Chamber of Shipping, despite its deceptive name, is not an agency of the Greek Government but merely a lobbying organization, as will appear by reference to the letter of Edwin K. Reid, Esquire, of counsel for this *Amicus*, dated September 4, 1969, appended hereto as Appendix C (p. C-1). It further appears from this letter that Petitioners are members of both *amicus* organizations, and Respondent notes that the attorneys for these *amici*, the New York firm

of Zock, Petrie, Sheneman & Reid, were the record counsel for Petitioner Hellenic Lines, Ltd. in the *Tsakonites* case, cited *supra*. It is therefore apparent that these *amici* and their attorneys are acting more for their own interest and for the interest of their clients than for the personal benefit of this Court; cf. *Nicklas v. Ajax Electric Co.* (Tex. Civ. App. 1960) 337 S.W.2d 163; *In re Olhauser's Estate* (So. Dak. 1960) 101 N.W.2d 827.

Nor is their Brief entitled to any greater regard as calling attention to material law, facts or circumstances not presented to this Court as between Petitioners' and Respondent's Briefs; cf. *Kemp v. Rubin* (1946) 64 N.Y.S. 2d 510. They make the extravagant suggestion that the Fifth Circuit's decision in this case could be applied to, e.g., Cunard Lines to subject its British employes to the Jones Act. Until it appears that Cunard has one owner who has been living in the United States and operating the QUEEN ELIZABETH or other British flags from a *principal* place of business in New York for over twenty years, such astonishing hypotheses are unworthy of serious thought.

By quoting out of context, at p. 5 of their Brief, language of the *Lauritzen* case, cited *supra*, which appears at p. 581 of 345 U.S., they attempt to create the appearance that this Court expressly ruled out the situs of a vessel's base of operations as an important fact affecting Jones Act applicability, whereas what this Court was actually discussing in the quoted language, as reference to the surrounding portions of the *Lauritzen* opinion will show, was United States contacts incidental to the conduct of a *bona fide* foreign operation, not a principal place of business and base of operations in the United States.

They attempt to elevate the terms of Respondent's work contract to the status of the ultimately dispositive element in this controversy by quoting, again out of context, at p. 7 of their Brief, language from *Lauritzen* as to the law that *would* apply in *contract* matters which appears at p. 589 of 345 U.S. That the quoted language was *obiter dictum* is rendered obvious by this Court's statement in the previous paragraph that

"* * * a Jones Act suit is for tort, * * * this action does not seek to recover anything due under the contract or damages for its breach." 345 U.S. 571, 588, 97 L. Ed. 1254, 1271, 73 S. Ct. 921, 931.

Further attention to their Brief is unmerited.

CONCLUSION.

Applicability of the Jones Act to this controversy is a pure question of fact and certiorari does not lie to resolve conflicts between circuits arising out of differing conclusions drawn from facts alone. The instant facts do not warrant the alarming conclusions drawn by Petitioners, which if believed might justify the granting of certiorari, that their owner is diplomatically immune, that the Fifth Circuit's decision unfairly subjects them to cumulative liabilities, that Respondent's work contract has any effect on intrinsic applicability of the Jones Act *vel non*, that Petitioner Hellenic Lines, Ltd.'s original incorporation in Greece can still affect choice of law now that it is domiciled and performs all its managerial and operative functions in New York City, or that the Greek Government has an enforceable interest in a Panamanian's ship. Removed from the deceptive shadows of these erroneous conclusions, the Fifth Circuit's

decision is undoubtedly correct on the facts. And Petitioners' confusion as to the conflicting status of their obligations in the Second and the Fifth Circuits is exactly what they have bargained for by scrambling up their national ties between Greece, the United States and Panama in order to avoid applicable law.

Respectfully submitted,

JOSEPH B. STAHL
ATTORNEY FOR RESPONDENT
804 Baronne Building
305 Baronne Street
New Orleans, Louisiana 70112

ROSS DIAMOND, JR.
Van Antwerp Building
P. O. Box 432
Mobile, Alabama 36601
Of Counsel



DEPARTMENT OF STATE

Washington, D.C. 20520

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,

Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

Harold A. Pace
Assistant Chief of Protocol



799 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017

YUWAS 6-504

UNITED STATES MISSION TO THE UNITED NATIONS

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

Bess N. Trinks
Privileges and Immunities
Officer

ΣΥΜΒΑΣΙΣ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

ΣΥΜΦΩΝΩΣ ΤΩ ΚΙΝ.Δ. (ΑΡΘΡΟΝ 53 ΚΑΙ 54)

1. ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

α) 'Ο Πλοίαρχος ή ο νόμιμος αντιπρόσωπος του Πλοιάρχου ή του 'Ιδιοκτήτου

του Α)Π, Μ)S, Π)Κ

HE 26 EM/G-HE R O

Νηολογίου ΠΕΙΡΑΙΩΣ κο.χ

7.068 ΔΔΣ. S. V. G η.

Πλοιοκτήτου Α.Ε. ΕΛΛΗΝΙΚΗ.

Κατόικου

εδος ΑΚΤΗ ΜΙΑΟΥΛΗ άριθ. 3

Διαχειριστού συμπλοικτηρίας (εφ' όσον υπάρχει)

Κατόικου

εδος

άριθ.

και β) 'Ο Ναυτιλός

P O I T H S - Z A X A P I G E

γεννηθείς εν M A T H Λ I G το έτος 1927 M E Θ . 17449

συνεφώνησαν την επί του ανωτέρω σκάφους ναυτολόγησιν του δευτέρου συμβαλλομένου υπό τους κάτωθι όρους:

Ειδικότης ναυτολογήσεως

W A V T H S

Μισθός και όροι εργασίας της Συλλογικής Συμβάσεως.

Διάρκεια Συμβάσεως: Έν κυκλικόν τα ξέθιον άρχόμενον εξ ΈΛΛΑΔΟΣ και λήγον εν ΕΛΛΑΔΑ, ΑΔΙΑΚΡΙΤΩΣ Λιμένων Φορτο εκφορτώσεως μετά προσέγγισιν εις λιμένας ΗΠ.Α., ΙΝΔΙΩΝ ή και ΠΕΡΙΕΚΟΪ ΚΟΛΙΟΥ.

2. ΕΙΔΙΚΟΙ ΟΡΟΙ

α)

β)

ΕΦΑΡΜΟΣΤΕΟΣ ΝΟΜΟΣ ΚΑΙ ΔΙΚΑΙΟΔΟΣΙΑ

3) Η παρούσα σύμβασις θα διέπηται άποκλειστικώς και μόνον υπό των Έλληνικών Νόμων και των Έλληνικών Συλλογικών Συμβάσεων.

Συμφωνείται περαιτέρω, ότι οιαδήποτε άπαιτήσεις ή διαφορά άπορρέουσα εκ της παρούσης ναυτολογήσεως ή συμβάσεως ή έρειδομένη άπωσθήποτε άμέσως ή έμμέσως επί της παρούσης συμβάσεως ή έρειδομένη άμέσως ή έμμέσως έφ' οιασδήποτε εργασίας ή άπτα σχολήσεως παρασχεθείσης επί του πλοίου παρά του ναυτιλκού θα κρίνεται και έκδικάζεται αποκλειστικώς και μόνον παρά των Έλληνικών Δικαστηρίων.

4) Το άπόπλοιον εύρίσκεται εν

ΗΡΑΚΛΕΙΟΝ

ΕΡΜΑΚΕΙΕ ΤΗ

11 ΔΕΚ. 1965

ΤΑ ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

'Ο Πλοίαρχος

'Ο Ναυτολόγιστος

[Signature]

[Signature]



Παρατηρήσεις:

Η παρούσα σύμβασις χρονολογείται και υπογράφεται: παρά των συμβαλλομένων και της σχετικής Αρχής.

Βεβαιούται ή έγκρίνεται γραμμάτων εκ μέρους του ναυτολογούμενου.

Η ΛΙΜΕΝΙΚΗ ΑΡΧΗ ΠΕΙΡΑΙΩΣ

ZOCK, PETRIE, SHENEMAN & REID

ANTHONY N. ZOCK
SHERMAN V. PETRIE, JR.
EDWIN K. REID
JOHN R. SHENEMAN
FRANCIS J. O'BRIEN
JAMES D. HANLON
HOWARD M. MCCORMACK
PHILIP J. CURTIN
GEORGE D. BYRNES
DONALD M. BURKE
CHARLES E. DUROSS

19 RECTOR STREET
NEW YORK 10006

September 4, 1969

CABLE ADDRESS
TOPSIDE

TELEX 421522

TELEPHONE
(212) 944-8766

Mr. Ross Diamond, Jr.
Messrs. Diamond, Lettoff & Favre
VanAntwerp Building
Mobile, Alabama 36601

Re: SS HELLENIC HERO - Zacharias
Rhoditis - our ref. #5504

Dear Mr. Diamond:

We have been retained by the Greek Union of Shipowners and the Chamber of Shipping of Greece to file a brief amicus curiae with the U.S. Supreme Court.

Rule 42 of the U.S. Supreme Court provides that a brief of amicus curiae may be filed only upon written consent of all parties or upon the granting by the Court of a motion upon leave to file.

To avoid a motion for leave to file we would appreciate a reply letter from you simply stating that consent is hereby given to the filing of an amicus curiae brief by the Union of Shipowners and the Chamber of Shipping of Greece.

Briefly, the members of the Chamber of Shipping of Greece are currently the owners of Greek Flag vessels irrespective of size or kind. There are several thousand members who between them own about seven-eight million gross tons of shipping. It is a consultant organization to the Ministry of Mercantile Marine on matters affecting Greek shipping, and is represented in International Conferences on general shipping questions. It has concern for matters covered by the Greek Collective Agreements by and between Greek Shipowners and the Greek Maritime Trade Unions aboard Greek flag vessels with respect to the law of the flag of the vessel and the laws contemplated in those agreements.

The Union of Greek Shipowners is composed of owners of Greek flag ocean going vessels of 1,000 tons or more and has a members nearly all Greek shipowners of some seven-eight million tons of shipping under

Mr. Ross Diamond, Jr.

Page Two

the Greek flag. The Union of Greek Shipowners is also interested in the Collective Bargaining Agreements and that internal events aboard a Greek flag vessel should remain covered by Greek law and by the law contemplated in those agreements. The Union of Greek Shipowners also represents the Greek owners in such matters as the negotiation of Collective Bargaining Agreements with the Greek Maritime Trade Unions, which agreement when approved by the Ministry of Mercantile Marine, are considered Greek law.

May we have your prompt reply?

Faithfully yours,

ZOCK, PETRIE, SHENEMAN & REID

EKR:MDJ

Edwin K. Reid
Edwin K. Reid

cc: Pillans, Reams, Tappan, Wood & Roberts, Attn: Mr. George Wood
Van Antwerp Building, Mobile, Alabama 36601

ZOCK, PETRIE, SHENEMAN & REID

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969.

No. 661.

HELLENIC LINES LIMITED AND UNIVERSAL
CARGO CARRIERS, INC.,

Petitioners,

v.

ZACHARIAS RHODITIS,

Respondent.

**BRIEF ON BEHALF OF NATIONAL MARITIME
UNION OF AMERICA AS AMICUS CURIAE.**

The National Maritime Union of America has obtained and filed the written consents of counsel for all parties herein to file this brief as amicus curiae in support of respondent.

STATEMENT OF THE CASE.

Respondent, a Greek merchant seaman, signed aboard the S. S. "Hellenic Hero" in Greece. Said vessel is owned by Universal Cargo Carriers, Inc., a Panamanian corporation, which in turn is owned by Hellenic Lines, a Greek corporation. The vessel flies the Greek flag. The said companies are managed and controlled from principal offices in New York City.

Pericles G. Callimanopoulos, a Greek citizen, owns 95% of the stock of Hellenic Lines. He has resided in the United States since 1945, and performs duties as managing director of the company from his office in the United States. Mr. Callimanopoulos became a "permanent" resident in 1957. Under his direction, the "Hellenic Hero" regularly and continuously runs to and from United States ports. Said vessel earns its entire income from transporting cargo to and from the United States.

On August 3, 1965, while aboard the vessel in the Port of New Orleans, the respondent was injured because of the negligence of petitioners and the unseaworthiness of the vessel. He brought suit in the Southern District of Alabama for damages under the Jones Act,¹ and obtained judgment against both petitioners. The petitioners appealed, contesting the applicability of the Jones Act. The United States Court of Appeals for the Fifth Circuit affirmed the judgment, and denied rehearing (412 F. 2d 919 (1969)). The companies filed Petition for Certiorari which was granted by this Court on January 12, 1970. Briefs have been filed herein by the petitioners, and, upon consent of all parties, by the Royal Greek Government, the Greek Chamber of Shipping and the Union of Greek shipowners, as amici curiae, in support of petitioners.

1. Act of June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007, 46 USCA 688.

INTEREST OF NATIONAL MARITIME UNION OF AMERICA.

The National Maritime Union of America, AFL-CIO, is a labor organization representing American merchant seamen. This union represents approximately 40,000 seamen and has labor agreements with 89 American steamship companies which operate cargo and passenger vessels throughout the world.

This union and its members are directly and deeply concerned with the effect of any decision of this Court concerning the application of the Jones Act to a merchant seaman where, although the vessel flies a foreign flag, the principal stockholders of the company are residents of the United States and the company has its principal offices in the United States and conducts its primary business here, and where the very ship involved earns its regular income from the cargo going to or from the United States—where the vessel is, in fact, flying a foreign “flag of convenience.”

Although essentially American-owned and commercially domiciled in the United States, and regularly doing business in our commerce in competition with American-flag vessels, these companies are evading responsibility for compliance with American statutes, labor standards, safety provisions, shipping regulations and tax laws, to the serious detriment of our merchant marine and our economy. The growth and protection of the American merchant marine, as well as the American national interest are the constant concern of this union and its members.

PRELIMINARY STATEMENT.

It would be in conflict with the declarations of Congressional intent to conclude that, in enacting the Jones Act, or any of the Merchant Marine Acts, Congress intended to exempt therefrom vessels owned and operated by companies domiciled in the United States and/or owned by residents of the United States, because of the facade of a foreign flag. Such an exemption would confer upon these vessels, which regularly use our ports to compete with American-flag shipping, a distinct competitive advantage in operational costs, at the expense of the American vessel and taxpayer. Public policy relative to American economic and military requirements demands that our laws bind equally all who are regularly involved in our commerce, be they citizens or aliens. Such conformity to American laws and standards will place the alien on an equal basis with the American merchant marine in competing for American business. Permitting "the law of the flag" to govern blindly the activities of these vessels would be an act of discrimination against our own merchant marine and our seamen. It is, indeed, cheaper to operate beyond the pale of American laws, and, thus, it makes for easier competition against American-flag vessels in the quest for the American dollar—free of American obligation.

Where American national interest is involved, all who approach our shores for a share of our national product and economy must be subject to our laws. This nation must not permit foreign-flag ships to take advantage of our benefits equally with the American merchant marine, and, simultaneously, evade the accompanying obligations. The Jones Act, a broad ameliorating statute, was passed to benefit all seamen who come within the American jurisdiction, and all who submit thereto must be governed by that law.

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ARGUMENT.

I. Where a Shipping Corporation Is Commercially Domiciled in the United States and Its Stockholders Are U. S. Residents, and the Vessel's Operations Are American-Based, and While in American Port a Foreign Seaman Is Injured Thereon in His Employment, the Facade of a Foreign Flag Will Not Prevent the Application of the Jones Act.

The petitioners and the amici on their behalf seek help from the decision of this Court in *Lauritzen v. Larsen*, 345 U. S. 571, 97 L. ed. 1254 (1953). The conclusion reached upon the facts in that case is wholly inapposite to the present one. However, the analysis and reasoning in *Lauritzen* demonstrate the propriety of the decision of the Court below upon the instant facts.

In *Lauritzen*, this Court held that the Jones Act did not apply to a seaman's injury aboard a Danish-flag vessel where the event, the seaman and the shipowners were all foreign, and the only American contact was that articles were signed in New York. The Court noted that maritime law tries to resolve conflicts between competing laws "by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved"; that is, the criteria are found by "weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." (U. S. at 582, L. ed. at 1267).

This Court then listed seven factors to be weighed: 1. The place of the wrongful act; 2. the law of the flag; 3. the allegiance or domicile of the injured; 4. the allegiance of the defendant shipowner; 5. the place of contact; 6. inaccessibility of foreign forum; 7. the law of the forum. In *Lauritzen*,

the injury occurred in Cuba; here, it occurred in the United States. In that case and this one, the injured seaman was a foreigner, and a non-resident. In *Lauritzen*, it appeared "that this owner is a Dane by nationality and domicile" (U. S. at 588, L. ed. at 1270). But here, while the owning corporations may be Panamanian and Greek, the actual owners of these companies are 20 year domiciliaries of the United States; and, as more fully discussed hereinafter, the companies themselves are domiciled in and operate wholly out of United States executive offices. In *Lauritzen*, the seaman relied chiefly on the fact that shipping articles had been signed in New York. This Court held that "the place of contracting . . . was fortuitous" since the "seaman takes his employment . . . where he finds it" (U. S. at 588, L. ed. at 1271). Thus, the fact that Rhoditis signed on the "Hellenic Hero" in Greece is of minimal, if any, significance. The accessibility of a foreign forum, comparable in both of these cases, was described by this Court in *Lauritzen* as "not persuasive", since even American courts can grant a forum under a foreign law, if the American law be deemed inapplicable. (U. S. at 589-90, L. ed. at 1271-72).

In both *Lauritzen* and the instant case, the forum was the same. In *Lauritzen*, however, this Court was caused to note that the fact that the shipowner does frequent business in the forum state "may fall quite short of the considerations necessary to bring extra territorial torts to judgment under our law." (U. S. at 590, L. ed. at 1272.) But, in the instant case, first, the shipowner corporation has its main office in the United States, all management of business and operations is performed in the United States and the vessel involved operates exclusively to or from U. S. ports and earns its entire income in such commerce. Second, we are not here dealing with an "extra-territorial tort", but with an event that occurred within the United States. The question for review as expressed by the petitioners asks whether

the courts below were correct in applying the Jones Act in this case "solely" on the ground that the majority stockholder of the corporate owner resided in the United States.² Petitioner ignores the fact that the accident occurred in the Port of New Orleans, and, that the petitioner corporations have their principal offices, operations and control here, 412 F. 2d 919, 921, 924-25.

The "law of the flag" in *Lauritzen*, as here, was foreign. This Court there said that this factor is of "cardinal importance" and must prevail "unless some heavy counterweight appears" (U. S. at 584, 586, L. ed. at 1269, 1270). In *Lauritzen*, this Court deemed the other "connecting events" as weighing heavily in favor of Danish law, since the only contrary factors were the facts that service of process was in New York and the plaintiff signed on the vessel there (U. S. at 592-93, L. ed. at 1273). Most significant are these remarks by Mr. Justice Jackson (U. S. at 592-93, L. ed. at 1273):

" . . . We do not question the power of Congress to condition access to our ports by foreign-owned vessels upon submission to any liabilities it may consider good American policy to exact. But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters."

Under this Court's pervasive reasoning and discussion, the facts in this case demand the opposite conclusion, because the "heavy counterweight" *does* appear.

2. Petitioners assert that this stockholder resided here "as a representative of Greece to the United Nations." However, the records show only testimony by a representative of petitioner's claims manager that Mr. Callimanopoulos was a member of the Greek delegation to the United Nations (R. 114-116). This is wholly insufficient to achieve immunity, which is limited to ambassadors and ministers plenipotentiary, or by specific designation and agreement. Agreement between U. N. and U. S., August 4, 1947, Ch. 482, Sec. 15, 22 USCA 287 (note), Sec. 15.

The instant facts show that the Panamanian and Greek corporations which own the "Hellenic Hero" have principal offices in New York and another in New Orleans. Hellenic Lines is managed from a base in New York, and all duties of management are performed there (412 F. 2d at 921). Further, the "Hellenic Hero", which is the vessel involved, not only regularly runs to or from United States ports, but her *entire income* is earned from cargo going to or from the United States.

In addition, and most significant to this Court's discussion in *Lauritzen*, these American-domiciled owning corporations are owned by shareholders who have resided in New York since 1945. The majority owner, Pericles Callimanopoulos became a "permanent resident" in 1956 or 1957.³ In New York, Mr. Callimanopoulos performs all duties as managing director of the owning corporation, and it is under this direction that the "Hellenic Hero" has been operating (412 F. 2d at 921).⁴

In *Lauritzen*, Mr. Justice Murphy made note of the recent practice of American shipowners adopting "flags of convenience", in discussing the "allegiance of the defendant shipowner" (U. S. at 587-88, L. ed. at 1270):

"Until recent times this factor was not a frequent occasion of conflict, for the nationality of the ship was that of its owners. But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent ship-

3. *Tsakonites v. Transpacific Carriers Corp.*, 368 F. 2d 426, 427 (2 Cir., 1966).

4. Petitioners and their amici urge that under this reasoning, "the great merchant fleets, passenger and cargo vessels" such as Cunard Line, et al., should also be told that their "commercial presence in the United States" overrides their flags (Brief of Amici Curiae, Greek Chamber of Shipping, et al., p. 10). This alarm is obviously misconceived, for we are here dealing, not with mere "commercial presence" of a foreign corporation, but with corporate and shareholder *domicile, operation and control* in the United States.

ping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them. But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality and domicile."

Here, on the other hand, we have owning corporations and individual stockholders who are wholly, and for more than a score of years, domiciled, resident and operating in the United States. Further, they make their living, not sporadically but regularly, in American commerce. Indeed, the only non-American factor is the retention of Greek and Panamanian nationality and incorporation. From these, the petitioners have eked the fiction of "foreign-flag"⁵ in order to insulate themselves from the laws of the United States, despite the fact that they are long-time United States domiciliaries.

In view of the American domicile, ownership and operation in this case, the Court below concluded that the "Hellenic Hero's" flag "is more symbolic than real", so that the "flag" is not due the same weight which *Lauritzen* gave to "a more sturdy flag", and said: "We therefore pierce the corporate veil and conclude that the *Hero's* flag is merely one of convenience." (412 F. 2d at 923).⁶

5. In *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 123-24, 67 L. ed. 894, 902 (1923), this Court said, in response to the "law of the flag" argument that "the statement sometimes made that a merchant ship is a part of the territory of the country whose flag she flies. . . . is a figure of speech.—a metaphor * * * a fiction. . . ."

6. The sheer illusory nature of the Greek flag is further emphasized by the fact that the ship is owned by Universal Cargo Carriers, which is a Panamanian corporation, and is, in turn, owned by Hellenic Lines, a Greek corporation.

The Court below referred, in its decision, to *Bartholomew v. Universe Tankships*, 263 F. 2d 437 (2 Cir., 1959). The decision in that case, which followed and discussed *Lauritzen* emphasized the uselessness of injecting foreign incorporation or registry between American-domiciled owners and an American event. In *Bartholomew*, Judge Medina reviewed the teachings of *Lauritzen* as applied against prior decisions of this Court and various Courts of Appeals. He noted a general refusal of the complete application of the Jones Act, despite its general language because of the necessity of a "mutual forbearance to avoid international retaliation", as expressed in *Lauritzen*. But, he noted, too, that the absence of any "single special factor of obvious significance" would not necessarily defeat the application of the Jones Act. Thus, the Jones Act has been applied despite a foreign flag, and although the tort did not occur in American waters (263 F. 2d at 440).⁷ Contacts considered significant in one case, he noted have been held not controlling in another. (440) He concluded that the test is that "substantial" contacts are necessary. Thus, each factor is to be weighed and evaluated to reach "a rational and satisfactory conclusion" as to whether the factors add up to the necessary substantiality. However, Judge Medina admonished:

"... each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act. . . ." (441)

Continuing, he stated that "the practice in this type of case of looking through the facade of foreign registration and

7. Indeed, Judge Medina pointed out that in *Uravic v. Jarka Co.*, 282 U. S. 234, 75 L. ed. 312 (1931) and in *Gambera v. Bergoty*, 132 F. 2d 414 (2 Cir., 1942), ownership of the vessel by American citizens was lacking.

incorporation to the American ownership behind it is now well established. . . ." (442), and that

" . . . This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. . . . In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the Stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act."

As the Court below noted in the instant case, the fact that the owners here are not American citizens as in *Bartholomew*, but aliens domiciled in the United States, makes no difference in piercing the flag of convenience, since aliens residing here are subject to the same commercial and tort laws as if they were citizens (412 F. 2d at 924).⁸ The *relebelow* (412 F. 2d at 923):⁹

8. Citing *Leonhard v. Eley*, 151 F. 2d 409, 410 (10th Cir., 1945), where the Court held that the duties and obligations of resident aliens "do not differ materially from those of . . . citizens".
vant factors require the conclusion reached by the Court

9. Recently, in *Groves v. Universe Tankships, Inc.* (S. D. N. Y., January 20, 1970) 38 L. W. 2417, the Court similarly found the "heavy counterweight" of a foreign flag, where the seaman and the owning corporations were foreign, but whose stock was owned almost entirely by two American citizens in residence, who ran the business

“ . . . In this case we find that heavy counterweight: the ‘Hellenic Hero’ was for all commercial purposes owned and operated by a United States domiciliary.”

In *Romero v. International Terminal Operation Co., et al.*, 358 U. S. 354, 3 L. ed. 2d 368 (1959), this Court discussed “the broad principles of choice of law and the applicable criteria of selection set forth in *Lauritzen*”, admonishing that “due regard must be had for the differing interests advanced by varied aspects of maritime law.” (U. S. at 382, L. ed. at 388.) This Court noted that the doctrines such as *lex loci delicti* will not be mechanically applied; however, it was not dismissed as an item of consideration. Instead the controlling considerations were held to be “the interacting interests of the United States and of foreign countries.” (U. S. at 383, L. ed. at 388.) In *Romero*, as in *Lauritzen*, both vessels were under foreign flags, both seamen were foreigners, the owning corporations were foreign, and were owned by foreign citizens and residents. In *Romero*, unlike *Lauritzen*, the injury occurred in American waters, but Mr. Justice Frankfurter said that “the amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury.” (U. S. at 384, L. ed. at 389.)

It is clear that this Court, in its application of the Jones Act in the case of a foreign flag vessel, acts upon the varying interests of the United States depending upon the varying factors. The more transparent the facade of “foreignness”, the greater the “interests” of the United States. In *Lauritzen* and *Romero*, the foreign owning and operating corporations were, in fact, *foreign*. In the instant case, as

from principal offices in the United States. Judge Bryan said that the foreign registration and incorporation were “a facade to disguise American ownership, operation and control and are merely mechanics in a scheme designed to avoid the consequence of such ownership and evade American shipping laws.”

held by the Court below, they were merely *fictions*, and the real ownership was in persons in permanent residence in the United States.

In *Southern Cross S. S. Co. v. Firipis*, 285 F. 2d 651 (4 Cir., 1960), a Greek seaman was injured aboard Honduran-flag vessel in the port of Norfolk. The Court noted the seven factors as set out in *Lauritzen*, acknowledging that the greatest weight was given to "the law of the flag". However, the Court said, "if the law of the flag is to control, the flag must not be one of convenience merely but bona fide," quoting the discussion of that point by Mr. Justice Jackson in *Lauritzen* (345 U. S. at 58). The ship was owned by a Liberian corporation, whose stock was owned by Greek citizens (80%) and an American citizen (20%). Orders directing ship movements came from both places (though the opinion indicates that, "effective control" appeared to be "by American interests"). In view of this "effective [American] control" and the fact that the injury occurred in an American port, the Court held that "the flag was nothing more than illusory" and that the Jones Act applied (654, 655).¹⁰ Chief Judge Sobeloff quoted the language from *Bartholomew* (263 F. 2d at 440) that, under *Lauritzen*, "the contacts considered most vital in one case are not necessarily of controlling importance in another." (285 F. 2d at 655).

In its opinion the Court below recognized that, on the same facts as here, a contrary result was reached by the Second Circuit in a 2-1 decision, in *Tsakonites v. Transpacific Carriers Corp.*, 368 F. 2d 426 (2 Cir., 1966). Peti-

10. In a footnote, p. 654, the opinion states:

"Moreover, even in situations where the flag was not shown to be merely one of convenience, other considerations have been held to justify the application of the Jones Act to ships of foreign registry. The Supreme Court in the *Lauritzen* case held that the law of the flag was the most important element, not that it was always the controlling element, and the Court recognized that heavy countervailing considerations might override it. . . ."

tioner, of course, relies on that case. The Court below, however, was unable to accept the reasoning and conclusion of the majority, but agreed with the "persuasive logic" of Judge Waterman's dissent (925). As the Court below concluded, Judge Waterman would have "pierced through the facade of foreign registration and foreign incorporation and have applied United States law." Since the injury occurred in the United States and the defendant shipowner, though an alien "has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him", and one which gives to him the same constitutional protections¹¹ and places on him the same duties and obligations¹² as if he were a citizen (368 F. 2d at 429-30). Thus, Judge Waterman concluded, unless the same obligations that United States law imposes on citizenshipowners, are imposed on resident alien shipowners, "a resident alien-shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner (368 F. 2d at 430).

As the Court below concluded, "the power of the flag is not limitless, and its cloth should not be stretched beyond realistic and reasonable lengths"; "maritime allegiance" must not be measured by a subjective-nationalism, "but in terms of economic ties" which are real and palpable (412 F. 2d at 926). In applying either the Jones Act or the "law of nations" the courts must seek the "factual" rather than the "fictional" factors, for the choice of law deals with fact.

11. Citing *Kwong Hai Chew v. Colding*, 344 U. S. 590, 596, 97 L. ed. 576 (1953).

12. Citing *Leonhard v. Eley*, 151 F. 2d 409, 410 (10 Cir., 1945).

II. The Jones Act Was Intended to Apply to and Benefit All Seamen on Vessels Owned or Operated by American Interests Irrespective of the Flag Carried.

The pre-*Lauritzen* background of the Jones Act, its Constitutional basis, and the policy which generated it, confirm the decision of the Court below. The Act was the culmination of the consistent trend toward the protection of the interests of merchant seamen, as an implementation and exercise of the power of Congress to regulate commerce and to nurture and protect American interests against foreign incursion. Those interests which seek to limit its application urge conflict between it and the laws of nations or international maritime law. However, the power of Congress cannot be denied, and the protective policy expressed in the Act is clear. In its plain language and operation, it is broad in scope, giving protection to all seamen injured in their employment in which the United States has a legitimate interest. Therefore, it benefits foreign as well as American seamen and binds all who submit themselves to our jurisdiction by entering American ports and partaking of our commerce.

This Court has expressed a strong policy, based especially on economic and defense requirements, that our laws be applied equally to all who conduct regular business in the United States, be they aliens or citizens. The general policy was early stated in *The Exchange v. Mc Faddon*, 7 Cranch 116, 136, 144, 3 L. ed. 287, 293, 296 (1812), where Mr. Chief Justice Marshall said:

“The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of

that sovereignty to the same extent in that power which could impose such restriction."

"When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country . . ."

It is a shocking fact that, as of 1969, vessels flying the American flag carried only six per cent of our total imports and exports.¹³ The Jones Act, as well as the prior Seamen's Act which it amended were intended by Congress to reduce the competitive advantage of foreign-flag operators seeking American business. As it is Constitutionally empowered, Congress has recognized that detriment to the American economy by weighted foreign competition is an effect going far beyond the "internal affairs" of a foreign vessel. Congress has refused to permit the American maritime industry to be so handicapped in the face of growing foreign competition. The result was a direct benefit to foreign seamen as well as to the American economy.

The Seaman's Welfare Act of March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185, was intended by Congress to promote, enlarge and strengthen the United States merchant marine. The Legislative History shows that its proponents, noting that "the operating expenses of a foreign

13. Remarks by Congressman Dent, March 20, 1969. Cong. Rec. E. 2267.

vessel are lower than [those] of an American vessel", intended that the wage and employment provisions of the Act "will equalize the cost of operation so that vessels of the United States will not be placed at a disadvantage", H. R. Rpt. No. 645, 62nd Cong., 2nd Session, p. 7. The Merchant Marine Act of 1920,¹⁴ broadly amended various statutes concerning the merchant marine. Sec. 1, 46 USCA 861, expressed its purpose and policy:

"Purpose and policy of United States

"It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; *and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this act, the Federal Maritime Board and the Secretary of Commerce shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.*" (Emphasis supplied).

Section 33 thereof was the Jones Act, 46 USCA 688, an amendment to Section 20 of the Seaman's Act of March 4, 1915, expanding rights to recover damages to "any seaman

14. Act of June 5, 1920, c. 250, 41 Stat. 1007, 46 USCA 861, et seq., etc.

who shall suffer personal injury in the course of his employment. . . .”

In *Strathearn S. S. Co. v. Dillon*, 252 U. S. 348, 64 L. ed. 607 (1920), in holding that a British seaman on a British vessel in an American port, is entitled to the protection of Sec. 4 of the Seaman's Act of March 4, 1915, 38 Stat. 1164 Ch. 153 (concerning payment of wages), to which statute the Jones Act is an amendment, Mr. Justice Day said (U. S. at 354-55, L. ed. at 611):

“ . . . Apart from the text, which we think plain, it is by no means clear that if the act were given a construction to limit its application to American seamen only, the purposes of Congress would be subserved *for such limited construction would have a tendency to prevent the employment of American seamen*, and to promote the engagement of those who were not entitled to sue for one-half wages under the provisions of the law. But, taking the provisions of the act as the same are written, we think it plain that *it manifests the purpose of Congress to place American and foreign seamen on an equality of right* in so far as the privileges of this section are concerned, with equal opportunity to resort to the courts of the United States for the enforcement of the act. . . .” (Emphasis supplied).

In *Monteiro v. Sociedad Maritima San Nicolas, S. A.*, 280 F. 2d 568 (2 Cir., 1960), an action for penalty wages under 46 USCA 596, by a foreign seaman on a foreign vessel paid off in the United States, holding that the seaman could recover under the “foreign vessel” provision, Judge Friendly said (573-74):

“This conclusion is fortified by examination of the reasons behind the insertion of the foreign vessel proviso. These reasons, hinted at in Mr. Justice Day's opinion in *Strathearn S. S. Co. v. Dillon*, *supra*, 252

U. S. at page 355, 40 S. Ct. at page 352, are impressively marshalled in the opinion that Mr. Justice Brandeis had prepared for possible delivery in that case, see Bickel, *The Unpublished Opinions of Mr. Justice Brandeis*, pp. 35, 47 ff., reprinted in 69 Harv. L. Rev. 1177, 1190 ff. Review of the legislative materials shows that the proviso was inserted for the benefit not so much of foreign as of American Seamen. *It was thought that to apply to foreign vessels touching at American ports some of the same requirements imposed upon our own would tend to 'equalize the cost of operation' of American and foreign flag vessels and thereby discourage American shipowners from placing their vessels under foreign flags.* See particularly H. R. Rep. 645, 62nd Cong., 2d Sess. (1912), p. 8; H. R. Rep. 852, 63rd Cong., 2d Sess. (1914), p. 19; and the remarks of Senator Fletcher, 50 Cong. Rec. 5748-49 (1915). This purpose could be better attained by giving foreign seamen unobstructed and mandatory access to the federal courts rather than by leaving it to the discretion of each district judge to remit the seaman to a foreign consul, who could hardly be counted upon to apply the special remedies of §§ 596 and 597. . . ." (Emphasis supplied).

Thus, the Courts have confirmed that Congress has sought, by the Seamen's Act and amendatory Jones Act, to reduce the competitive advantage of foreign flag operators.¹⁵

15. "This affirmative intention of the Congress with regard to labor relations on foreign vessels has been expressed by the Congress in statutes dealing with wage payments to seamen on foreign vessels in American ports, the so-called 'Seamen's Wages Acts.' These Acts of Congress were actuated by the American flag shipping's apparent interest in reducing the competitive advantage of the foreign-flag operators by indirectly forcing them to pay higher wages, and so equalizing the operating costs of American and foreign-flag operations. . . ." Boczek, "Flags of Convenience" (Harvard Univ. Press, 1962), page 161.

In *Gerradin v. United Fruit Co.*, 60 F. 2d 927' (2 Cir., 1932), Judge A. N. Hand, after pointing out that many United States statutes impose obligations upon American and foreign shipowners, concerning safety measures (60 F. 2d at 928), which contain "minute details of internal management", said (60 F. 2d 929):

" . . . So far as such an objection may have force, it is enough to say that matters of 'internal management' are not involved in an action by a seaman to recover damages for injuries suffered through the negligence of the shipowner. A similar contention was made in *Urvic v. Jarka*, supra, to defeat the action by an American stevedore for injuries suffered while at work in New York Harbor on a German-owned ship, but Justice Holmes answered it by saying (282 U. S. at page 240, 51 S. Ct. 111, 112, 75 L. Ed. 312): ' . . . We see no reason for limiting the liability for torts committed there when they go beyond the scope of discipline and private matters that do not interest the territorial power.' " (Emphasis supplied)

Complying with this Court's teaching, that the "attending circumstances of the particular case" will control the decision,¹⁶ in *Gambara v. Bergoty*, 132 F. 2d 414 (2 Cir., 1942), the Court applied the Jones Act where the injured seaman was an alien of 20 years' residence here,¹⁷ and was injured aboard a foreign-flag vessel within United States waters. The Court recognized that where an alien seaman is serving on a foreign ship owned by aliens and on a voyage which begins and ends abroad, he cannot sue under the Jones Act for injuries suffered "while the ship happens to be stopping at a port of call within our territorial waters"

16. *Wildenhus' Case*, 120 U. S. 1, 30 L. ed. 565, 569.

17. The seaman had taken his "first papers" for naturalization.

(415). But, the Court said that the facts at issue were different. The seaman had lived in the United States for 20 years, serving mostly on American ships, and the voyage began and ended in the United States. Applying these factors to the Jones Act policy, the Court gave that seaman the benefit of the statute. Judge L. Hand said, at p. 416:

"The Jones Act was the culmination of a series of efforts, largely those of the Seamen's Union, to secure more adequate relief for American seamen, injured in their employment. It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class merely because they had not been naturalized . . . In *Ura-
vic v. F. Jarka Co.*, supra, 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312, it was at least left open whether the act applied to foreign seamen and that would go much further than to apply it to an alien, circumstanced like the libellant. We see nothing in the definatory section, § 713, Title 46 U.S.C.A., to limit the application of the act to American ships or American citizens. As to ships *Ura-
vic v. F. Jarka Co.*, supra, was an express answer and thereafter the definition no longer offered an obstacle to including foreign seamen."

Applying the beneficent policy behind the statute the Court held that its previously applied technical limitations must bend where the circumstances dictate.

The same ameliorating circumstances exist in the instant case. The "Hellenic Hero" bears a Greek name and flag. It is titled to a Panamanian corporation which is owned by a Greek corporation. There, her Greek contacts end. The real ownership "is essentially American" and its commerce is essentially American (412 F. 2d at 921). Ninety-five per cent of the stock in the Greek corporation is

owned by residents of the United States. The corporation has its principal office in New York, where *all* management is based, and another in New Orleans. The managing owner-shareholder has resided in the United States for over 20 years, and the vessel involved earns all of its income from trips to or from the United States.

Clearly, the same weight of circumstances exists here as in *Gambera*. There, the seaman was a resident alien who had previously sailed mostly in United States ships, but he was injured on a foreign vessel in American waters. In the instant case, the seaman is foreign, but he was injured in an American port aboard a foreign-flag ship owned essentially by long-resident aliens and managed by a company seated in the United States, which vessel operates exclusively to or from United States ports. As Judge Hand stated, to hold that the circumstances here do not come within the Act "would . . . pretty clearly defeat the overriding purpose of Congress."

In *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437, 442-43 (2 Cir., 1959), Judge Medina stated that this Court's opinion in *Lauritzen v. Larsen*, 345 U. S. 571, 97 L. ed. 1254 (1953) gives no indication whatever of an intention to repudiate *Uravic*, *Gerradin* or *Gambera*.

Recently, in *International Longshoremen's Local 1416 v. Ariadne Shipping Co.*, — U. S. —, 38 L. W. 4207 (No. 231, October Term, 1969, 3/9/70), this Court held that longshore work casually performed for the vessel in connection with its regular operation did not involve "any internal affairs" of the vessel, referring to *Uravic v. Jarka*.

CONCLUSION.

Under the factors set forth in *Lauritzen*, the Greek flag in this case is without any substance, and is completely outweighed by: 1. the American-based and domiciled owning corporations; 2. executive and everyday control from prin-

cipal offices here; 3. ownership of these American-domiciled corporations by persons who have resided in the United States for 20 years who became "permanent residents" 8 years before the incident; 4. the vessel involved earns her entire income from cargo going to or from the United States; the "heavy counterweight" against the fictional foreign flag overwhelmingly exists here.

The Seamen's Acts of 1915 and the amending Jones Act were adopted to assist the American merchant marine by protecting the individual rights of seamen and by equalizing the cost of operation, as concerns American commerce, between American and foreign-flag vessels. This, Congress had the Constitutional right, indeed obligation, to do. In view of the fast-fading American merchant marine, the public policy behind the Jones Act is more significant today than ever before.

The decision of the Court of Appeals for the Fifth Circuit reflects the reasoning of this Court in the past and the policy of the Congress, and should be affirmed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,

FREEDMAN, BOROWSKY & LOREY,

*Counsel for National Maritime Union,
Amicus Curiae,*

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IN THE
Supreme Court of the United States
October Term, 1969

No. 661

**HELLENIC LINES LIMITED and UNIVERSAL
CARGO CARRIERS, INC.,**

Petitioners,

versus

ZACHARIAS RHODITIS,

Respondent.

BRIEF OF RESPONDENT

JOSEPH B. STAHL
804 Baronne Building
305 Baronne Street
New Orleans, Louisiana 70112
Attorney for Respondent

ROSS DIAMOND, JR.
Van Antwerp Building
P. O. Box 432
Mobile, Alabama 36601
Of Counsel

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Argument	
I. In a tort suit for shipboard injuries by an alien seaman invoking U.S. law, against his employer-shipowner corporations and their vessel which are of foreign registry and flag, the law of the vessel's flag, though usually of cardinal importance, is inapplicable if there exists some heavy counterweight to it or the flag is merely one of convenience, and U.S. law is applicable if the U.S. contacts of the vessel and its owners are weightier or more substantial than such other national contacts as they may happen to have	19
II. A citizen of a foreign nation who has been a permanent resident alien domiciled in the U.S. for twenty-five years, owes his allegiance to the U.S., and where he is the virtual sole owner of a vessel which flies, for purely economic reasons, the flag of the nation of which he is a citizen, and he operates this vessel along with twenty-one others from a base or commercial domicile in the U.S., in a regularly scheduled liner service handling cargo at U.S. freight rates between the U.S. and fifteen nations not including the one of which he is a citizen, with	

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all voyages on such liner service originating and terminating in the U.S., these circumstances as a matter of law sustain the conclusion that the flag is one of convenience, not *bona fide*, and they amount to so much weightier and more substantial contacts with the U.S. than with the flag nation as to pose an effectively heavy counterweight to the flag's law and to warrant the application of U.S. law to a tort suit perfected in a U.S. forum for shipboard injuries sustained in a U.S. port by an alien seaman against such U.S. domiciliary's wholly owned employer-shipowner corporations and his vessel . . . 21

III. A provision in an alien seaman's employment contract, purporting to oust in advance the applicability of all but the law of a foreign nation to his disputes with his employer arising out of the contract, can never decide or even affect the question of Jones Act applicability to a tort suit by such seaman, both because the terms of a seaman's employment contract were not a factor included in the seven factor test of *Lauritzen v. Larsen* which controls the resolution of this Jones Act applicability question and because no contract, rule, regulation or device is competent to abrogate a maritime employer's liability under the Jones Act if it is found applicable by virtue of this

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seven factor test; nor can such contract be enforced by the vessel owner which was not a party to it; and such contracts are in any event *ipso facto* void in the eyes of international maritime law, especially where the seaman, being illiterate, is induced, by assurances of his employer that it is alright, to sign it without having had it read or even explained to him and without receiving any extra compensation for his agreement, since general maritime law requires that the meaning and significance of such restrictive provision in a seaman's employment contract must be explained to the seaman even if he is not illiterate and that the seaman be paid extra compensation as consideration for agreeing to restrict his rights. And because such a restrictive provision in the seaman's employment contract was the sole basis of the decision not to apply U.S. law in the *Tsakonites* case, such decision was error . . . 38

- IV. Where, in an alien seaman's tort suit for shipboard injuries invoking both the Jones Act and the general maritime law of the U.S., the U.S. District Court of the district where the seaman has obtained process against the vessel finds the Jones Act applicable but specifically predicates its award to such seaman on unseaworthiness as well as negligence, then a review-

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ing court holds the Jones Act inapplicable by virtue of the seven factor *Lauritzen* test, the District Court's award will be allowed to stand as being justified by a U.S. Admiralty court's discretion to retain jurisdiction of the case and apply the general maritime law of the U.S., which provides relief for unseaworthiness, where such law's only repugnance to the maritime law of the nation of the vessel's flag is procedural, not substantive, and especially where relegation of the seaman to a distant foreign forum long after the occurrence of the tort would result in substantial injustice to him by requiring him to start all over again without the help of his U.S. counsel who had prepared the proofs necessary to establish liability.

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- V. The certainty that an award to a seaman for injuries will be less under the law of a foreign nation than under U.S. law is not a significant consideration influencing choice of law in a seaman's tort suit; nor can U.S. law be rendered inapplicable, as providing an optional remedy cumulative to that afforded by a foreign law, by virtue of an employer-shipowner's bad faith conduct in directly paying cash to the seaman, already represented by counsel prosecuting his tort claim under U.S. law, just because the employer-ship-

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owner chooses to designate such payment as a partial benefit due under that foreign law, since gratuitous payment of benefits, even to an unrepresented claimant, can never determine what law is ultimately applicable. 52

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IN THE
Supreme Court of the United States
October Term, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL
CARGO CARRIERS, INC.,

Petitioners,

versus

ZACHARIAS RHODITIS,

Respondent.

BRIEF OF RESPONDENT

o

QUESTION PRESENTED

Can the owner of a fleet of twenty-two ships, who has been a U.S. domiciliary for twenty-five years, during which he personally has managed and operated, from within the U.S., with these ships, a regularly scheduled liner service handling trade, at U.S. liner conference freight rates, between the U.S. and fifteen nations not including Greece, avoid the application of U.S. law to tort suits by his seamen-employees against his Greek and Panamanian registered corporations which are commercially domiciled in the U.S., by buying Greek flags to fly on his ships and manning them with Greek crews hired under contracts providing an exclusive Greek remedy, for the sole reason that he happens to have been born in Greece?

STATEMENT OF THE CASE

99% of the stock of Petitioners Hellenic and Universal has always been owned by Mr. Pericles G. Callimanopoulos (A. 68, 83 & 65), who was born in Patras, Greece, in 1892 (A. 119). In 1935 Mr. Callimanopoulos incorporated Petitioner Hellenic and registered it in Greece, at which time it owned one ship (A. 123). By 1939, Petitioner Hellenic owned eight ships, all which the Greek Government confiscated upon the outbreak of World War II, and all but the oldest one of these ships were sunk by enemy action during that War (A. 123-124).

In 1945 Mr. Callimanopoulos moved to the U.S. (A. 148) in order to start again, this time in the shipping business of the U.S. (A. 127). He did not remain in Greece and hire a corporation of the U.S. as agent to manage and operate all contacts of his shipping transactions with the U.S. incidental upon handling the trade of Greece with the U.S., rather he came here to personally handle a trade between the U.S. and other countries not including Greece (See references to Single Appendix, *infra*). World cargoes in 1945, were not any more in the U.S., as compared to being in Greece, than they had been between 1935 and 1938 when Mr. Callimanopoulos expanded from one to eight ships as *bona fide* Greek shipowner operating from Greece; nor in 1945 was the U.S., because of its prodigious wealth, in any more of an advantageous trade position in international commerce by comparison to Greece than it had been, also because of its prodigious wealth, from 1935 to 1938. The U.S. has always been

rich; Mr. Callimanopoulos came here, like most people who do, because he preferred the advantages of our form of government and law.

In 1948 Mr. Callimanopoulos brought his family here and he and they took up residence in Greenwich, Connecticut; he has never since then moved his home from there to Mexico or Canada or anywhere else; in fact, except for vacations to Greece for a month or so several times a year, he has been living in the U.S. since 1948 (A. 148-151). His *animus manendi* in the U.S. is so clear that the presumption of domicile attaching to his long residence here is insuperable, and indeed no evidence was adduced to rebut this presumption anyway.

As a start for his new U.S. operation, Mr. Callimanopoulos bought five "Liberty" ships from the U.S. Government (A. 127). Even in his pre-World War II days in Greece, he had dreamed of breaking with the custom of Greek shipowners of engaging exclusively in international dry-cargo tramping, by establishing a system of liner services (A. 120), but it was not until after he was already living in the U.S. that he actually did this (A. 159).

Tramp operators do not provide scheduled sailings between predetermined ports but instead negotiate each separate voyage with the owner of a bulk of homogeneous cargo, under a charter of the vessel to the cargo owner arranged by a shipbroker, usually in London or New York; obviously, contacts of a tramp operator with ports other than those of his own nation

are only incidentally necessary to his operation and do not necessarily establish a connection of any significance with such other ports.

Liner operators, on the other hand, maintain regular sailing schedules at predictable intervals from the same ports, thus, in addition to cargo, they may also carry passengers and mail; they will ship anything anyone wants to send, consequently their cargoes are usually composed of a wide variety of general merchandise of differing values, nature and quantity, but their ships are guaranteed to sail on schedule whether full or not; experience teaches the liner operator to adjust the design and performance of his ships toward fulfilling the requirements of the shippers habitually using his services, as Callimanopoulos did (A. 123-124). By its nature, liner operation requires an extensive, permanent organization of staff and offices at each end of the liner route; thus, famous liner services like the Cunard Line, Holland-America Line, French Line and Italian Line are well known for their large offices and extensive business involvement in the U.S. without there existing, however, any doubt that they are *bona fide* foreign corporations whose stock is owned by a multitude of the nationals and domiciliaries of their own countries, and whose executive headquarters are in their own countries, and that these corporations are often extensively regulated or even partly owned by their own governments (e.g. the French Line, Compagnie Generale Transatlantique, and the Italian Line, Italia Line), seeing that they render the indispensable service to their own nations of carrying their trade with, *inter alia*, the U.S., a service in which the govern-

ments of their countries have a legitimate interest. In such cases, their contacts with the U.S. are undoubtedly incidental to a *bona fide* foreign business concern and, again, do not establish a connection of any significance with U.S. ports.

Furthermore, liner companies not only provide regular shipping of every kind of cargo, but they are also prepared to do so at previously advertised freight rates fixed by the liner conference system, a system formed by shipping companies of different ownership and nationality, that operate between the same range of ports, for the purpose of regulating uneconomic competition, by fixing the freight rates they will charge for each type of goods carried and by allocating a specified number of sailings to each conference member company. The fact that the liner conference system in the U.S. is subject to regulation and approval by the National Shipping Authority in accordance with the provisions of the Shipping Act of 1916, 46 U.S.C.A. §§ 801-842, while it does not compel any conclusion that such *bona fide* foreign companies as Cunard, etc., which are members of U. S. liner conferences should be viewed as U. S. business enterprises, nevertheless does mean that all members of U.S. liner conferences, whether domestic or *bona fide* foreign, are charging freight rates which are standard in the U.S. on cargoes regularly originating and terminating in U.S. ports, and not just operating casual ships that occasionally pick up cargoes here at cut rates.

It was a system of liner services rather than a tramp operation that Mr. Callimanopoulos originated in the

U.S., after he came to the U.S. (A. 159), and although at first he actually did run a liner service between the U.S. and Greece (A. 127), he had already, long before this cause of action arose, abandoned this U.S.-Greece liner service and had been, was and is operating, with twenty-two ships, five liner services between the U.S. and fifteen nations not including Greece (A. 71-72, 90-95, 136, 141, & 155-157); his corporations are members of U.S. liner conferences, charging U.S. liner conference freight rates (See *Hellenic Lines, Ltd. v. Federal Maritime Board* (U.S. App. D.C. Cir. 1961) 295 F.2d 138.); and his U.S. liner service vessels have been occasionally hired by the U.S. Government to carry foreign aid cargoes of the U.S. to Egypt (A. 70). There was testimony in the District Court by Petitioners' witness Mr. Hennessy that Callimanopoulos' U.S. Gulf-India, Pakistan liner service vessels "may call at Piraeus when cargo warrants" (A. 87), but it is clear that such occasional tramp sorties off this one liner route, if there really are any (for not only is such "tramping off" antithetical to liner operation, but Callimanopoulos himself testified emphatically that he runs no tramp services (A. 163)), are purely incidental to this one U.S. Gulf-India, Pakistan Liner service rather than Callimanopoulos' presence in the U.S. being genuinely incidental to some unpredictably sporadic trade between the U.S. and Greece. His only remaining regular cargo contact with Greece is on one liner service running between Great Britain, Northern Europe, Greece and Turkey only (A. 71-72, 136 & 161), which is operated by the Fenton Steamship Co., a British company which, according to Mr. Callimanopoulos himself, is not even a subsidiary of Petitioner Hellenic and in which he is only a partner (A. 167-8); in addition, he is involved in two other

liner services which touch neither the U.S. nor Greece; and he owns a total of fourteen ships in use on these last three liner services (A. 71-72, 136 & 161).

Clearly there is no factual similarity between the U.S. liner operations of Mr. Callimanopoulos and those of such liner operators as the Cunard, Holland-America, French and Italian Lines, nor between his reasons for having a presence in the U.S. and theirs; all his stock "lives" and is controlled in the U.S., and because he hardly even handles trade between the U.S. and the nation from which he came, his presence here is not only not an incident to furtherance of commercial relations between Greece and the U.S., but represents for him a conscious and deliberate self-immersion in the commercial life of the U.S. for its own sake.

In 1956, in the fashion typical of American shipowners and with the advice, help and draftsmanship of New York lawyers, he organized and incorporated two Panamanian corporations, Transpacific Cargo Carriers, Inc., and Petitioner Universal Cargo Carriers, Inc., neither of which has ever had any offices or employees in Panama, and registered to them the ownership of nineteen of his twenty-two U.S. liner service vessels, including the s/s HELLENIC HERO (to Petitioner Universal) (A. 65, 90, 164-166 & 168). Surely, under this arrangement, he would never have to worry about the Greek Government's confiscating these ships which were owned by Panamanian legal persons; his alienation from the arbitrary government of his homeland was complete. And just to make sure that the other obvious advantage of this arrangement (the three-

way splitting up of corporate profits and the funneling of most of them into two Panamanian corporations (A. 85), for tax purposes) would be preserved by an appearance of reality, Mr. Callimanopoulos and his lawyers had Petitioner Hellenic and Petitioner Universal enter into an agreement in 1960 by which Hellenic was to act as Universal's agent for cargoes in Greece at 1¼% commission (A. 36-40). The sham involved here was of course that Universal's ships never handle any more than occasional cargo to or from Greece. The naivete of Callimanopoulos and his advisors in erecting this facade and their optimism in believing no one would see through it becomes apparent when it is noted that Petitioner Universal's first answer to Respondent's Interrogatory in the District Court herein, as to who owns Universal's stock, was that it is all bearer stock and that consequently the names of the holders of it were unknown (A. 32 & 34); then, in answer to an additional, more probing Interrogatory, the information was elicited that all Universal's stock is owned by Hellenic (A. 45-46 & 47-48), a fact which could not have been unknown to Petitioners when they answered the first Interrogatory. But, in any event, in the abundance of his circumspection to avoid being subjected to the jurisdiction of Greece, in the event of Hellenic's becoming broiled in a dispute with Universal because of some unforeseen recalcitrance of Universal's three dummy officers-directors (A. 34), Callimanopoulos included in this agreement a provision that any dispute between the two corporations must be submitted for resolution to an arbitrator in New York, in accordance with New York Arbitration Law, whose decision would be as final as the judgment of a court, and that

the interpretation of the agreement would be governed by "the laws of the State of New York, United States of America" (A. 39).

Additional evidence of Mr. Callimanopoulos' distaste for any other jurisdiction and law but that of the U.S., when it suits him, is the fact that he preferred to sue the Republic of Tunisia, right across the Mediterranean from Greece in North Africa, in U. S. courts rather than in Tunisia and even went to the extreme of trying to compel a deputy U. S. Marshal to serve the diplomatically immune Tunisian Ambassador to the U.S. with process (See *Hellenic Lines Ltd. v. Moore* (U.S. App. D.C. Cir. 1965) 345 F. 2d 978.), and the fact that his corporations have willingly sought the protection of U.S. law in the reported cases listed at Volume 53, Moore's Federal Practices Digest, Table of cases "A-L", under "Hellenic Lines, Ltd." and Volume 55, Defendant Plaintiff Table "A-L" (for cases in which Hellenic was Appellee).

Mr. Callimanopoulos has continued at all times to buy and fly Greek flags on his vessels, although he also occasionally operates vessels flying other nations' flags when cargo demands exceed the capacity of his own ships (A. 162 & 202), and to staff them exclusively with Greek crews (A. 66-67, 73 & 120), these practices representing the only contact between his U.S. liner services and Greece. Any U.S. based liner operator collecting shipping revenues at U.S. freight rates who can hire seamen at the base rate of wages of \$112.00 per month in Greece, as Callimanopoulos does (A. 76), and trust that U.S. courts will consider applicable to their tort claims the law of his Greek flags, and who is thus

arrogating to himself in each phase of his operation the best of all possible commercial worlds, would be foolish, no matter how long he has lived here, to swear allegiance to the flag of the United States of America, give up his Greek flags and Greek crews, hoist the stars and stripes on his ships and start hiring U.S. seamen at American seamen's union wage scales; but any pretense that these Greek flags and crews are indicia of Callimanopoulos' loyalty to Greece is insupportable. It was simply a matter of convenience for him, before the closing of the Suez Canal, that the Greek island of Crete is far from the Greek mainland, out in the middle of the Mediterranean, seeing that his U.S. liners seldom or never carry Greek cargoes, since his ships could and did pick up and discharge its Greek crews at Herakleion, Crete (A. 74, 176 & Brief of Petrs., App. A-2) while on the route between the U.S. and Red Sea, Persian Gulf and Indian ports, without the necessity of deviating from this route to go to Piraeus on the Greek mainland; and there is no doubt that since Suez has been closed, it is still profitable for him to fly these Greek crews to New York where they may undergo the ceremony of signing Greek articles at the Greek Consulate there, which he occasionally did even before the Canal was closed (A. 175-176 & 181-182).

There is no question but that Mr. Callimanopoulos personally runs all five of his U.S. liner services from his offices in the U.S. (A. 83). He was living here as a treaty trader from 1945 to 1951, when he became a permanent resident alien, a status he still maintains (A. 148), which renders him eligible for U.S. citizenship (8 U.S.C.A. §1427), but he has never sought it. Accord-

ing to the U.S. Department of State and the U.S. Mission to the United Nations, he has never enjoyed diplomatic immunity, much less any diplomatic status at all in the U.S. (Appendices A & B to this Brief). His Insurance and Claims Manager at Hellenic, New York lawyer Gerald Hennessy, testified at the trial below in the Southern District of Alabama that Callimanopoulos has been a member of the Greek Delegation to the United Nations since 1963 (A. 69). In addition to the contradiction thereof by our State Department and our Mission to the U.N., it is interesting to note that when questioned closely about the purpose of his residence here at his deposition in 1964 he failed to mention such U.N. Delegate status (A. 148-149). At any rate, while Petitioners do not contend that Callimanopoulos is diplomatically immune, they appear to take the position that his twenty-five year domicile in the U.S. in order to run his U.S. liner services has now been explicable since 1963 in terms of "special purpose" to fulfill his U.N. Delegate status duties. Clearly, any courtesy passport or other token official papers which Mr. Callimanopoulos may have been successful in obtaining from the Greek Consulate at New York in 1963 after having already been engaged in the shipping business here for eighteen years is insufficient to persuade that they are the sole reason for his presence in this country or that, absent such papers, he would now pack up his huge shipping business and move back to Greece.

The office of Hellenic Lines at 39 Broadway in New York City from which Callimanopoulos runs his five U.S. liner services employs approximately one hundred personnel (A. 153); Hellenic has another office in New Orleans to facilitate his U.S. Gulf ports trade which

employs fifteen people (A. 90); its New York headquarters also regularly employs one hundred American stevedores (A. 153-154); and it owns its own docks in Brooklyn (A. 90); whereas Hellenic's office in Piraeus employs only approximately sixty personnel (A. 71). This latter office is styled by Hellenic its "home" office, but styling can not make it so. The letterhead of Hellenic's "home" office stationery in Piraeus is entirely in English as is the correspondence carried on it (Appendix C to this Brief & A. 24-25), although the official language of international correspondence in Greece is French (See Brief of Greek Chamber of Shipping and Union of Greek Shipowners as Amici Curiae, Exhibit B, at p. 3a, upper left corner). Furthermore, the Piraeus office reports everything that happens there to the New York office, rather than vice-versa, even to the extent that when the Piraeus office learns of the movement of any European cargo, this information is relayed to the New York office so that the latter, not the Piraeus office, may solicit such cargo (A. 69), indicating that central headquarters of the company is in New York, not Piraeus. Reference to the printer's mark in the lower lefthand corner of Hellenic's wage vouchers, on which it tabulates an accounting of the wages paid to Greek seamen it pays off all over the world, shows that these wage vouchers are printed in New York City, not to mention the fact that the printed form of these vouchers is in English (Appendix D to this Brief). More significant is the fact that Hellenic's, Universal's and Transpacific's ships all have English names written on their bows and sterns, in the English language, in addition to the words, in English, "Hellenic Lines" largely emblazoned on their hulls (A. 122, 124, 128, 133, 135). A casual trip to the docks of any port city

will reveal to anyone that real Norwegian, Danish, Polish, German, French, Spanish, Yugoslavian, Turkish, Israeli, Pakistani, Indian, Nationalist Chinese and Japanese vessels, not to mention *real* Greek vessels, trading here, all have foreign names in their own, often peculiar looking alphabets, on their hulls, with an occasional, in the case of non-Roman alphabets, English transliteration also printed underneath. Interestingly, when Callimanopoulos was operating in Greece between 1935 and 1938 before he started over in the shipping business of the U.S., he had been giving his ships Greek names (A. 123).

Petitioner Hellenic obtains its financing from the National City Bank of New York and the Irving Trust Co. in New York (*Tsakonites v. Transpacific Carriers Corp.* (2 Cir. 1966) 368 F.2d 426 at 427. One of Hellenic's directors, a Mr. Frank Slater, is a U.S. citizen and domiciliary (A. 41 & 151). In addition, the Treasurer of the corporation, a Mr. Cajzer, who handles collection of Hellenic's freight charges all over the world, is a U.S. citizen and domiciliary (A. 164).

The inescapable factual conclusion from all the foregoing is that not only is Callimanopoulos personally and commercially domiciled in the U.S. but that also, by consequence thereof, his two figurehead corporations, Petitioners Hellenic and Universal, though of original foreign registration just as Callimanopoulos was originally foreign by birth, are now commercially domiciled in the U.S. and have been since 1945 and 1956 respectively.

In July of 1965 Respondent Rhoditis, a Greek citizen, was employed as a seaman A.B. aboard the s/s HELLENIC HERO in Callimanopoulos' U.S. - India Pakistan Liner Service (A. 75 & 87). He signed a contract with Petitioner Hellenic only, not with Petitioner Universal, providing for his job classification, wages and hours; the contract further provided that any dispute arising out of the employment for which it provided would be adjudicable exclusively by Greek courts applying Greek law (A. 19-20, 67, 85 & Appendices E & F to this Brief). It is clear that the latter provision refers to actions based on breach of the contract or for specific performance, not to tort suits. Respondent can neither read nor write, he did not know the contract papers contained the latter provision, and he signed them without them having been read or explained to him because "the company says they're all right." (A. 191 & 201). Furthermore, no extra compensation — as consideration for his agreement to so restrict his rights — was paid to Respondent by either of Petitioners. Because the HERO, like all Callimanopoulos' U.S. liner service ships, did not come to the Greek mainland (A. 176), he had to join it at Herakleion, Crete, while it was en route between the U.S. and south central Asian ports (A. 74 & 75).

The injury on which this suit is based was sustained by him aboard ship in the Port of New Orleans on August 3, 1965 (A. 192 & 189), and this suit was filed by his counsel on August 13, 1965 (A. 7). In spite of Petitioner Hellenic's knowledge that he was represented by counsel, its agents and employees not only approached him directly, both in New Orleans and upon his return to Greece, with overtures of settlement and

encouragement to abandon this suit (A. 198-199, 24-25 & Appendix C to this Brief), they actually gave him the equivalent of \$160.00 in cash directly (A. 76 & 92), a fact which Petitioners now flaunt in their Brief herein, calling this cash "a part of the compensation due him * * * pursuant to the laws of Greece" (Brief of Petitioners, p. 21).

Petitioners have given assurances at all stages of these proceedings that they stand ready to accept service of process in Greece, to appear there and to refrain from defenses of a jurisdictional and statutory limitation nature; in support of the honesty of these assurances they have appended to their Brief a copy of a transcript of proceedings terminating the action instituted in Greece by one Elias Tsakonites after the courts of the U.S. had dismissed his suit against Hellenic and Transpacific, in which the defendants had made the same assurances they are making herein. This transcript reveals first that Hellenic refused to make an appearance in Tsakonites' Greek action, and that only Transpacific actually appeared, secondly that Transpacific did raise a peremptory defense based on a Greek statute of limitations, and finally that all differences between Tsakonites and Transpacific were resolved by voluntary compromise settlement, in which the seaman received the equivalent of about \$2,600.00 for injuries that would have been worth at least \$50,000.00 in American courts (Petitioners' Brief A-1 — A-7; & A. 76 for factor of converting drachmae to dollars). Thus Petitioners' assurances to Respondent in this case will mean nothing unless Respondent is willing to accept what they are willing to pay, leaving him quite at their mercy in Greece.

This suit originated as a libel under the general admiralty laws of the U.S., *in rem* against the s/s HELLLENIC HERO (which Respondent seized at Mobile in the Southern District of Alabama, where security for its release was posted by Petitioners) and *in personam* against Petitioners Hellenic and Universal (A. 7-14). The initial response of Petitioners herein was a plea to the District Court's admiralty jurisdiction (A. 15-17). After discovering that Petitioners had substantial U.S. ties, Respondent also moved the District Court to apply the Jones Act (A. 58). The District Court, sitting without a jury, denied Petitioners' plea to the Court's admiralty jurisdiction (A. 58), and again, after trial without a jury on all questions — jurisdiction, applicable law and the claim on its merits, found the Jones Act applicable but specifically based its award of \$6,000.00 to Respondent on not only Petitioners' negligence but also on the unseaworthiness of their vessel (273 F. Supp at 249). It is therefore abundantly clear that the District Court felt that, even if the Jones Act might be inapplicable, its award to the seaman was justifiable anyway on the District Court's exercise of its discretion to retain admiralty jurisdiction of the case and apply the general admiralty law of the U.S. This is further borne out by the fact that the District Court specifically commented that it was taking note of the uncontradicted testimony in the trial record, by Petitioners' witness, Mr. Hennessy, that under Greek law injured seamen are required, as a matter of procedure only, to apply for relief under a "no fault" workmen's compensation type statute (A. 77-78), and that if it then appears "that the captain or the vessel failed in some statutory duty owed to the man, then at this Piraeus Court of First Instance, they may make him.

an award of indemnity aside from the rights of compensation." (Emphasis added.) (A. 78). Surely the District Court was aware then that according to the proof introduced by Petitioners themselves, the U. S. general maritime law concept of awarding damages to a seaman for a vessel's unseaworthiness causing injury to him is not repugnant to the maritime law of Greece, except merely insofar as the Greek law contains a procedural, not a substantive, requirement that the seaman first provoke a hearing by applying for compensation before his right to damages for unseaworthiness can become ripe for determination.

SUMMARY OF ARGUMENT

I

The law of the nation of the vessel's flag is inapplicable to an alien seaman's tort suit if the flag is not *bona fide* or when, even if it is *bona fide*, there exists some heavy counterweight to it.

II

The permanent resident alien status and U.S. domicile for twenty-five years of a shipowner operating his vessels from the U.S. during that time is a heavy counterweight to such vessels' foreign flags requiring the application of U.S. law to his seamen-employees' tort suits, and in fact establishes that such flags are not *bona fide* foreign.

III

A provision in a foreign seaman's employment contract calling for exclusive resort to courts of a foreign nation applying that nation's law in the event of a dispute with the employer arising out of the contract can never decide or even affect the question of what law applies to such seaman's tort suit.

IV

Where an Admiralty court of the U.S. exercises its discretion to retain jurisdiction of a foreign seaman's tort suit in which he proves unseaworthiness as well as negligence, and the Jones Act is inapplicable to such suit, the general maritime law of the U.S. can properly be applied if it is not substantively repugnant to the law of the nation of the vessel's flag.

V

A shipowner's hope of a lesser award to a foreign seaman under the law of a foreign nation and the gratuitous payment to the seaman, designated by the shipowner as a partial benefit under such foreign law, can not determine that U.S. law is inapplicable — as having been rendered an optional cumulative remedy — to the seaman's tort suit.

VI

The application of U.S. law to a foreign seaman's tort suit against a shipowner domiciled in the U.S. who has already voluntarily subjected himself to

U.S. law in many suits has no reasonable tendency to provoke retaliation against the U.S. by the nation of the shipowner's birth from which he has long ago conclusively expatriated himself.

ARGUMENT

I

In a tort suit for shipboard injuries by an alien seaman invoking U.S. law, against his employer-shipowner corporations and their vessel which are of foreign registry and flag, the law of the vessel's flag, though usually of cardinal importance, is inapplicable if there exists some heavy counterweight to it or the flag is merely one of convenience, and U.S. law is applicable if the U.S. contacts of the vessel and its owners are weightier or more substantial than such other national contacts as they may happen to have.

Contrary to Petitioners' arguments, neither Respondent nor the Courts in which this action has pended have attempted to disregard or to escape the confines of *Lauritzen v. Larsen* (1953) 345 U.S. 571. Respondent and these Courts have cited *Lauritzen* as authority for their positions all along; the question here is not whether *Lauritzen* applies, for certainly it does, but whether the lower Courts herein have reached a result in accordance with the correct interpretation of *Lauritzen* as it applies to the instant facts.

With respect to the importance of the law of the flag in this type of suit, the *Lauritzen* Court said that "[T]he weight given to the ensign overbears most other connecting events in determining applicable law," and "it

must prevail unless some heavy counterweight appears." (emphasis added). 345 U.S. at 584-86. The Court further recognized that in addition to a heavy counterweight to a *bona fide* foreign flag, a flag of convenience, whether flown by an American or a foreign shipowner, could also serve as a justification for disregarding the law of the flag, when it noted that "a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries." (emphasis added). 354 U.S. at 587.

As to the question whether U.S. law applies in this type of suit if the law of a foreign flag does not, this Court has consistently manifested its intention that this question be answered by "ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." *Lauritzen v. Larsen*, 345 U.S. at 582. "Hence it must be said that in a particular case something between minimal and preponderant contracts is necessary if the Jones Act is to be applied [T]he test is that 'substantial' contacts are necessary." and "The ultimate issue, then, is whether the substantiality of other existing factors establishing a connection with the United States is sufficient to outweigh the 'venerable and universal rule.'" *Bartholomew v. Universe Tankships, Inc.* (2 Cir. 1959) 263 F. 2d 437, 439, cert. denied, 359 U.S. 1000.

II

A citizen of a foreign nation who has been a permanent resident alien domiciled in the U.S. for twenty-five years, owes his allegiance to the U.S., and where he is the virtual sole owner of a vessel which flies, for purely economic reasons, the flag of the nation of which he is a citizen, and he operates this vessel along with twenty-one others from a base or commercial domicile in the U.S., in a regularly scheduled liner service handling cargo at U.S. freight rates between the U.S. and fifteen nations not including the one of which he is a citizen, with all voyages on such liner service originating and terminating in the U.S., these circumstances as a matter of law sustain the conclusion that the flag is one of convenience, not *bona fide*, and they amount to so much weightier and more substantial contacts with the U.S. than with the flag nation as to pose an effectively heavy counterweight to the flag's law and to warrant the application of U.S. law to a tort suit perfected in a U.S. forum for shipboard injuries sustained in a U.S. port by an alien seaman against such U.S. domiciliary's wholly owned employer-shipowner corporations and his vessel.

Petitioners concede that the U.S. domicile of the injured seaman would be a sufficiently heavy counterweight to a *bona fide* foreign flag to overthrow the application of its law, a concession to which they admit they are bound by *Utavic v. F. Jarka Co.* (1931) 282 U.S. 234 and *Gambera v. Bergoty* (2 Cir. 1942) 132 F. 2d 414. They then argue however that the U.S. domicile of the shipowner is not a similarly sufficient counterweight, pointing out in support thereof that whereas the *Lau-*

ritzen Court used the phrase "Allegiance or Domicile of the Injured", it used only the words "Allegiance of the Defendant Shipowner" in its paragraph headings which guide the reader through the opinion, as if to say that the *Lauritzen* Court did not intend the domicile of the shipowner to be a factor of significance, and Petitioners further argue that the *Lauritzen* Court intended to equate "allegiance" with "citizenship".

Answering Petitioners' argument that the *Lauritzen* Court intended to rule out the shipowner's domicile as a factor of importance, Respondent here quotes from the text of the *Lauritzen* opinion itself:

"But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality and domicile." (Emphasis added.) 345 U.S. at 587-588.

We are not at liberty to believe that a jurist of the international stature of Mr. Justice Jackson, who wrote for the *Lauritzen* majority, was tossing words around idly when he said "and domicile" with reference to the, there, true alien character of the defendant shipowner. Surely he would not have bothered to include those words in his opinion, which still stands as a masterpiece of complex thought economically and precisely expressed, unless he intended that the shipowner's domicile should be a factor as significant as the factor of the seaman's domicile, and unless he felt that a U.S. domicile of the shipowner would have warranted the

result, opposite to the one reached in that case, of applying the Jones Act. The explanation for the difference in the paragraph headings, with the word "domicile" absent in connection with the shipowner, is that the seaman's lawyers in that case were contending that their client was a U.S. domiciliary by virtue of some transient residence here (a contention the Court rejected), whereas there was no argument and no contention for the Court to accept or reject as to whether the shipowner was anything but a Danish domiciliary, thus leaving the matter of the shipowner's domicile "beyond doubt" by contrast to the matter of the seaman's domicile. It is clear therefore that these paragraph headings in *Lauritzen* reflect no more than the evidence and the argument of counsel peculiar to that case, and should not serve to distract the Court now from the text of the opinion, which was meant for all time and which clearly equates the shipowner's domicile with that of the seaman as an effective counterweight to the law of the flag, plainly indicating that a U.S. domicile of the shipowner is sufficient to warrant the application of U.S. law.

Petitioners, apparently recognizing the weakness of their argument that the shipowner's domicile is not a factor of significance, avoid confronting the fact that they and their owner are domiciled in the U.S. by then pretending that the Fifth Circuit based its decision below on the shipowner's mere residence here rather than on the fact that he is domiciled here, and argue that since Callimanopoulos could change his residence from Canada to Mexico and beyond from day to day, it was error for the Fifth Circuit to apply to this case

the law of the nation of his residence. The irrelevance of this argument consists in Petitioners' refusal to recognize that the Fifth Circuit did not base its decision on Callimanopoulos' mere residence in the U.S. but on the fact that "the HELLENIC HERO was for all commercial purposes owned and operated by a United States domiciliary." (Emphasis added.) 412 F. 2d at 923. And the fact remains that after twenty-five years in the U.S. this shipowner has not moved to Canada, Mexico or anywhere else yet.

But in any event, answering Petitioners' argument that according to *Lauritzen* "allegiance" must be equated with "citizenship", Respondent submits that the word "citizenship" was not beyond the reach of this Court, and Respondent finds the significance of the choice, instead, of "allegiance" rooted as far back as the early history of this Court in maritime matters, a history of which Mr. Justice Jackson could not have been unaware.

During that early history, it was the function of this Court, in several cases which arose out of the War of 1812 and the events that led to it, to determine whether certain vessels and goods captured during that period were of "enemy character" and as such liable to condemnation as prizes. Since such a determination depended on what the *allegiance* of their owner was, that is, whether the owner owed his allegiance to one or another belligerent nation in the war or to a non-belligerent nation, this Court fixed, in those cases, a standard for testing the national allegiance of a person as it would affect such person's relations with the whole

world, including not only persons of diversity of allegiance, but also his own co-allegiants. And it should be borne in mind that evidence both intrinsic and extrinsic to the papers of the vessels and their cargoes was admissible to prove the national allegiance of their owners according to this standard in these cases. That standard was most notably expressed in *THE PIZZARÒ*, 2 Wheat. (U.S.) 227, wherein a citizen of Great Britain, but a resident of Spain, made claim to a portion of the cargo of a Spanish vessel that had been brought to the United States for condemnation as a prize. He based his claim upon the Treaty of 1795 between Spain and the United States making certain concessions to Spanish subjects in cases such as this. It did not appear that he had ever been naturalized as a Spaniard. The Court, treating the claimant as a Spaniard despite his British citizenship, and speaking through Mr. Justice Story, held:

"Indeed, in the language of the law of nations, which is always to be consulted in the interpretation of treaties, a person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country. He owes allegiance to that country, while he resides in it; temporary, indeed, if he has not by birth or naturalization, contracted a permanent allegiance; but so fixed that, as to all other nations, he follows the character of that country, in war as well as peace," 2 Wheat. (U.S.) at 245.

Nor was this Court hesitant to apply the same rule against a citizen of the United States domiciled abroad. In *THE VENUS*, 8 Cranch. (12 U.S.) 253, wherein United States citizens domiciled in Great Britain claimed, as consignees of cargo, freight captured from a British vessel by an American privateer prior to the onset of the War of 1812, the captors of the property contended that the residence by United States citizens in Great Britain gave them a British status such as to bar their lawfully claiming the cargo. In upholding this contention of the captors, Mr. Justice Washington stated for the majority:

"Now if a permanent residence constitutes the person a subject of the country where he is settled, so long as he continues to reside there, and subjects his property to the law of reprisals, as part of the property of the nation, it would seem difficult to maintain that the same consequences would not follow in the case of an open and public war... If then, nothing but an actual removal, or a bona fide beginning to remove, can change a national character acquired by domicil and if.... the property belonged to such domiciled person in his character of a subject, what is there that.... exempt[s] it from capture by the privateers of his native country." (Emphasis added). 8 Cranch. (12 U.S.) at 283.

Again, in *Johnson v. TWENTY ONE BALES*, 6 Am. L.J. 68, 97 (D. N.Y.) it was held that a citizen of the United States who had resumed his residence in

Great Britain could not claim goods captured during the War of 1812 from a merchant vessel by an American privateer, on the ground that he had become stamped, by virtue of his British residence, with the national character of that land notwithstanding his American citizenship (p. 85):

"I think it may be assumed as a principle, that the law of nations without regarding the municipal regulations prescribed for his admission, views every man as a member of the society in which he is found. Residence is *prima facie* evidence of national character; susceptible, however, at all times of explanation, if it be for a special purpose and transient in its nature, it shall not destroy the original or prior national character. But if it be taken up *animus manendi*, with the intention of remaining, then it becomes a domicile, superadding to the original or prior character, the rights and privileges, as well as the disabilities and penalties of a citizen or subject of the country in which the residence is established." (Emphasis added).

That the courts of other nations during that period were adopting the same attitude is evident from the following language of the British jurist Sir William Scott in *THE INDIAN CHIEF* (England) 3 C. Rob. Adm. 12:

"He came however to this country [England] in 1783, and engaged in trade and has resided-

in this country till 1797; during that time he was undoubtedly to be considered as an English trader; for no position is more established than this, that if a person goes into another country, and engages in trade, and resides there, he is by the law of nations to be considered as a merchant of that country; I should therefore have no doubt in pronouncing that Mr. Johnson was to be considered as a merchant of this country, at the time of the sailing of this vessel on her outward voyage." (Brackets added).
3 C. Rob. Adm. 12, 18.

And the foregoing opinion was cited with approval by Mr. Justice Story of this Court in *THE FRANCIS*, Fed. Cas. No. 5034, affirmed, 8 Cranch. (12 U.S.) 363 at 673-674:

"Such then being the domicil' and national character of Mr. Gillespie, he must, according to the settled rules of public law, be deemed to partake of the advantages and the hazards of a British merchant [though a citizen of the United States], in peace and in war. For all commercial purposes, it is quite immaterial, what is the native or adopted country of a party. He is deemed a merchant of that country, where he resides, and carries on trade. The Indian Chief, 3 C. Rob. Adm. 12," (Brackets added.)

Since no vessels or cargoes have been brought into a U.S. prize court in over a hundred years, there has

been no continuing jurisprudence on this subject *per se*, but this Court as well as other courts of the U.S. have since then continued to deem that permanent resident aliens domiciled in the U.S. owe their allegiance to this country in peace as well as in war; *THE DOS HERMANOS*, 2 Wheat. 76, 96, 15 U.S. 37, 46; *THE VENICE*, 69 U.S. 258, 275; *Mitchell v. U.S.* (1875) 88 U.S. (21 Wall.) 310, 22 L. Ed. 584, 586; *Carlisle v. U.S.*, 83 U.S. 147; *U.S. v. Chin Quong Look*, 52 F. 203; *Leonhard v. Eley* (10 Cir. 1945) 151 F. 2d 409, 410; and *Kwong Hai Chow v. Colding* (1953) 344 U.S. 590, 596, 97 L. Ed. 576. That Mr. Justice Jackson actually had the prize cases in mind is evident from his citation of Grotius on the Law of Prize (Grotius, *de Jure Praedae*) in Footnote No. 15 of the *Lauritzen* opinion, 345 U.S. at 583.

In spite of the fact, as mentioned above, that the foregoing authorities in some instances specifically resolve the question of allegiance as against the world, Petitioners insist that these authorities are restricted exclusively to cases of a resident alien's relations with the U.S. and cannot apply to Callimanopoulos' relations with Respondent, a Greek. Respondent answers however that the question whether the Jones Act applies to Callimanopoulos or his corporations in such a case as this is a question involving Callimanopoulos' relations with the U.S., for surely the Jones Act is deemed to be strongly affected with the national interest; cf. *Strathearn Steamship Co. v. Dillon* (1920) 252 U.S. 348 at 354-355.

Petitioners' theory that domicile is so inconsequential that Greek shipowners domiciled in the U.S. are

movable islands of Greek law unto themselves, except where the interest of the U.S. or its citizens is directly involved, can not be accepted without entailing peculiar results, for in a case where one such Greek shipowner domiciled in the U.S. has personally committed a tort, in the U.S., on another such Greek shipowner similarly situated in the U.S. like himself, it would follow from Petitioners' theory that our courts must apply the standards of conduct and monetary awards of Greek law to such victim's cause of action. Taking Petitioners' theory a step farther, Greek law would apply to such a tort, committed in the U.S., by such U.S. domiciled Greek on a citizen of England or other foreign nation also domiciled in the U.S., since, according to Petitioners, no interest of the U.S. or its citizens is directly involved. Theories must always be tested by the soundness of their ultimate results, and by that test, administered in a conflict of laws context, Petitioners' theory obviously fails.

Respondent submits therefore that the language of *Gambera v. Bergoty*, *supra*, at 132 F. 2d 416, relative to seamen, was intended by Mr. Justice Jackson in *Lauritzen* to apply to alien shipowner-employers domiciled here:

"It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class *merely because they had not been naturalized.*" (Emphasis added.)

Respondent is aware that, whereas on the one hand

the U.S. domicile of an injured seaman amounts to an effective counterweight to the law of a foreign flag, but does not in itself even tend to establish that such flag is not *bona fide*, on the other hand the U.S. domicile of a shipowner can be considered either as amounting to an effective counterweight to the law of a foreign flag or as simply establishing that such flag is not *bona fide*. The distinction is in either event immaterial, for even if Petitioners' contention that the s/s HELLENIC HERO's Greek flag is not one of convenience but *bona fide* is accepted, the fact remains that, in accordance with *Lauritzen*, the U.S. domicile of Callimanopoulos poses an effective counterweight to that flag's law. But Petitioners' contention that the vessel's Greek flag is *bona fide* can not be accepted, for it is really based on nothing more than the fact that Callimanopoulos was born in Greece; the shipping enterprise he started in Greece had been reduced to nought in World War II by the time he first came here, such that all his present shipping activity is a creature of purely U.S. origin. Under these circumstances his resumption of the use of Greek flags after he came here is not entitled to be treated any differently in the eyes of the law than the purchase of a Greek merchant flag by a U.S. citizen would be, just because Callimanopoulos was born in Greece.

Nor can Petitioners reasonably contend that, since it is they, not Callimanopoulos, who have been sued herein, his U.S. domicile can not affect their original foreign registry, for they, being mere figureheads of Callimanopoulos, are now and have long been commercially domiciled here. The foregoing authorities

amply support the proposition that commercial as well as personal domicile in a country is a predicate for allegiance thereto, but other, more recent cases, directly concerned with shipping transactions, have explicitly held that the commercial domicile in the U.S. of a corporation of foreign registry is sufficient to require its subjection to the Jones Act by simply considering it an American corporation. Thus the Court in *Bartholomew v. Universe Tankships, Inc.*, *supra*, 263 F. 2d at 442 said:

"What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act."

Similarly, in *Voyiatzis v. National Shipping & Trading Corp.* (S.D. N.Y. 1961) 199 F. Supp. 920, the Court, speaking of a Panamanian shipowner corporation commercially domiciled in the U.S., said that "the shipowner and the ship's agents are, for our purposes, both American nationals;". 199 F. Supp. at 925.

In two other cases, *Southern Cross Steamship Co. v. Firipis* (4 Cir. 1960) 285 F. 2d 651, and *Pavlou v. Ocean Traders Marine Corp.* (S.D.N.Y. 1962) 211 F. Supp. 320, foreign shipowner corporations — which had hired corporations of the U.S. as their general agents and turned over to them all managerial and operational functions to be performed by them in the U.S. — were subjected to the Jones Act, in the latter case on the

express theory that a U.S. "base of operations", which was not described in *Lauritzen* as a factor of importance in the same language, is a factor requiring the overthrow of the law of a foreign flag and the application of the Jones Act. Subsequent writers, commenting on *Pavlou*, have tended to regard this as an eighth factor worthy of consideration, notably the Fifth Circuit in this case below; 412 F.2d at 923. But it is clear that the phrase "base of operations" is no more than another way of describing the *Lauritzen* factor of the domicile of the defendant shipowner where the commercial domicile of a corporate shipowner is involved, as in *Southern Cross* and *Pavlou*, rather than the personal domicile of an individual shipowner, as in *Lauritzen*.

Furthermore, even in *Lauritzen*, where no corporate shipowner was involved, there are clear and unmistakable indications that, had there been a foreign corporate shipowner performing all its managerial and operational functions from a U.S. "base" or commercial domicile rather than merely a *bona fide* foreign individual using a U.S. agent incidentally to his transitory contacts with the U.S., the result would have been different. Mr. Justice Jackson said:

"The 'doing business' which is enough to warrant service of process may fall quite short of the considerations necessary to bring extraterritorial torts to judgment under our law." Emphasis added.) 345 U.S. 571 at 590.

And earlier in the opinion he had said:

If, to serve some *immediate* interest, the courts of each [nation] were to exploit *every such* contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea." (Brackets and emphasis added.) 345 U.S. 571 at 581.

Surely Mr. Justice Jackson had in mind some "considerations" that would have sufficed to bring even an extraterritorial tort to judgment under our law. Can it be seriously doubted that there are present here, at the very least, "the considerations necessary to bring" an *intraterritorial* tort "to judgment under our law", seeing that to do so would not amount to exploiting every one of a small group of U.S. contacts purely incidental to a *bona fide* foreign concern to serve some immediate and transitory interest, but would amount instead to treating two corporations and their owner, commercially and personally domiciled here, in the same way our courts have been treating such creatures for over one hundred and fifty years? Surely the line drawn by *Lauritzen*, excluding from the application of the Jones Act foreign shipowners who do no more than enough of an incidental business here to get served with process, can not be deemed to similarly fence off the instant Petitioners.

Petitioners then argue that the "base of operations" factor of *Pavlou* has been overruled by implication by the Second Circuit in *Tjonaman v. A/S Glittre and*

Fearnley & Eger (2 Cir. 1965) 340 F. 2d 290, cert. den. (1965) 381 U.S. 924, reh. den. (1965) 382 U.S. 873. Respondent is at a loss to see how Petitioners can base this argument either on *Tjonaman's* result or its language. There, the Jones Act was held inapplicable to the claim of a Dutch seaman, injured off the coast of Ghana in the service of a *bona fide* Norwegian flag, against a *bona fide* Norwegian shipowner who had no U.S. base of operations. The Second Circuit merely noted that *Pavlou*, along with *Brillis v. Chandris* (S.D. N.Y. 1963) 215 F. Supp. 520 (which it also did not overrule), had interpreted *Lauritzen* narrowly to apply to cases with practically identical facts (an unjustified construction of *Pavlou's* language anyway), whereas this interpretation, the Second Circuit merely said, was unnecessary. Furthermore, Respondent notes that even in *Tsakonites*, *supra*, the case in conflict herewith, the Second Circuit mentioned *Pavlou*, not as having been overruled in *Tjonaman*, but simply as a case which "attached considerable significance to the base of business operations," (368 F. 2d at 428), and then said nothing more about it. Respondent can only conclude that the Second Circuit in *Tsakonites* felt that *Pavlou* was factually distinguishable, a question which depends on what factual proof was present in *Tsakonites*. But even granting, *arguendi gratia*, that *Pavlou* has been overruled, what significance, Respondent asks, has that here? In both *Pavlou* and *Southern Cross* the foreigners who stayed at home, but hired corporations of the U.S. to perform all their managerial and operational functions in the U.S. (Orion Steamship Company and Eastern Steamship Company were the U.S. corporations, respectively, in those cases.), were subjected to the Jones Act; how much more is *Callimano*

poulos, who has personally immigrated to our shores with his corporate entourage and pitched his tent here to run the show himself, subject to the Jones Act? These questions answer themselves.

But what really puts the teeth in Respondent's contention that the commercial domicile or base of operations of a corporate shipowner is to be considered as the domicile of the defendant shipowner, within the meaning of *Lauritzen* for purposes of choice of law, is the fact that even where the stockholders in such a corporation are U.S. citizens, but the corporation does not have its commercial domicile in the U.S. and its ships are not controlled from a U.S. base of operations, the Jones Act does not apply. This was the holding of the U.S. District Court for the Southern District of New York in no less than three cases, *Argyros v. Polar Compania De Navegacion Ltda.* (S.D.N.Y. 1956) 156 F. Supp. 624, *Mrproumeriotis v. Seacrest Shipping Co.* (S.D.N.Y. 1957) 149 F. Supp. 265 and *Moutzouris v. National Shipping & Trading Co.* (S.D.N.Y. 1961) 194 F. Supp. 468. All these three cases relied on *Lauritzen* and in all three the Court specifically pointed out that the only connective factor with the U.S. was the U.S. citizenship of the corporate stockholders, leaving it beyond doubt that there were no U.S. corporate commercial domiciles or bases of operation. Furthermore, Respondent emphasizes that these three cases, when taken with the holding in the *Pavlou* case, *supra*, in which the Jones Act was applied by the Southern District of New York where the vessel was owned by foreign corporate stockholders but controlled from a U.S. base or commercial domicile, and when taken further with the Southern District of New York cases of *Zielinski v.*

Empresa Hondurena de Vapores (S.D.N.Y. 1953) 113 F. Supp. 93, *Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A.* (S.D.N.Y. 1958) 168 F. Supp. 236, and *Voyiatzis, supra*, in which the Jones Act was applied where the ultimate vessel owning corporate stockholders were U.S. citizens and there were U.S. bases of operations and commercial domiciles, leaves the conclusion utterly inescapable that it is an iron-clad rule within the Second Circuit that *no matter what* the citizenship of the ultimate corporate vessel owning stockholders is, the Jones Act applies if, and only if the ship is controlled from a U.S. base or commercial domicile. These seven cases last cited, having isolated the common denominator of "base of operations" or commercial-domicile so nicely from such a welter of possible combinations of circumstances, are, taken together, absolutely insusceptible of any other interpretation.

Petitioners also make the argument that the sole basis for the Fifth Circuit's decision in this case below was the occurrence of the within tort in the U.S. Other courts have expressed the view that the occurrence of the tort in U.S. waters is "undoubtedly a factor of significance" (*Bartholomew v. Universe Tankships, Inc., supra*, 263 F. 2d at 441) and that such fact, coupled with operation of the vessel from the U.S., would require the application of U.S. law; *Southern Cross, supra*, 285 F. 2d 651 at 655. What the Fifth Circuit actually said in this case below was that "[t]his alone would not be sufficient to invoke the Jones Act [citing *Romero v. International Terminal Operation Co.* (1959) 358 U.S. 354, 3 L. Ed. 2d 368]" but "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points

to Jones Act applicability." (Emphasis added). 412 F. 2d 919 at 924-925. Indeed, Respondent notes that as between the two Second Circuit cases of *Gambera v. Bergoty*, *supra*, and *O'Neill v. Cunard White Star, Ltd.* (2 Cir. 1947) 160 F. 2d 446, cert. den. 332 U.S. 773, 92 L. Ed. 358, the common denominator of the place of the wrongful act was also nicely isolated. In both cases the seamen were foreign citizens, each had been domiciled in the U.S. for, coincidentally, twenty years, and each had applied for U.S. citizenship; and in both cases the defendant shipowners were *bona fide* foreign. In applying the Jones Act to Gambera's claim the Second Circuit regarded as significant the fact that the voyage on which he was injured in U.S. territorial waters originated and terminated in the U.S., and in denying Jones Act coverage in *O'Neill* the Second Circuit distinguished *Gambera* on the expressly stated ground that the wrongful act occurred on the high seas on a voyage which originated and terminated in England. So neatly do these two cases isolate this factor that, again, the conclusion is inescapable that it is a rule of the Second Circuit that, coupled with the U.S. domicile of a party, the occurrence of the tort in U.S. waters on a voyage originating and terminating in the U.S. not only "points to" Jones Act applicability but demands its application.

III

A provision in an alien seaman's employment contract, purporting to oust in advance the applicability of all but the law of a foreign nation to his disputes with his employer arising out of the contract, can never decide or even affect the question of Jones Act appli-

cability to a tort suit by such seaman, both because the terms of a seaman's employment contract were not a factor included in the seven factor test of *Lauritzen v. Larsen* which controls the resolution of this Jones Act applicability question and because no contract, rule, regulation or device is competent to abrogate a maritime employer's liability under the Jones Act if it is found applicable by virtue of this seven factor test; nor can such contract be enforced by the vessel owner which was not a party to it; and such contracts are in any event *ipso facto* void in the eyes of international maritime law, especially where the seaman, being illiterate, is induced, by assurances of his employer that it is alright, to sign it without having had it read or even explained to him and without receiving any extra compensation for his agreement, since general maritime law requires that the meaning and significance of such restrictive provision in a seaman's employment contract must be explained to the seaman even if he is not illiterate and that the seaman be paid extra compensation as consideration for agreeing to restrict his rights. And because such a restrictive provision in the seaman's employment contract was the sole basis of the decision not to apply U.S. law in the *Tsakonites* case, such decision was error.

What the terms of the injured seaman's employment contract are was not made one of the seven factors of significance in *Lauritzen*; while the place of the contract was accorded some weak significance, its terms were given none. Subsequent writers have nevertheless been misled by some language of the *Lauritzen* opinion into the belief that a provision in a foreign

seaman's employment contract calling for the exclusive resort to the courts of a foreign nation applying only that nation's law can determine that the Jones Act does not apply to such seaman's tort suit against his employer. These writers are clearly guilty of bad reading.

In *Lauritzen*, as here, there was such a contract. But the *Lauritzen* language referred to actually made it sun clear that "a Jones Act suit is for tort" and "does not seek to recover anything due under the contract or damages for its breach." (345 U.S. at 588) and then went onto set forth, by way of dictum, what law *would* apply only if the suit were a contract action:

"But if contract law is nonetheless to be considered, we face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so setting upon the law of the flag-state as their governing code." (Emphasis added). 345 U.S. at 588-589.

The conclusive proof that this Court did not intend the terms of such a contract to be a factor of significance in determining Jones Act applicability lies in the following statement at 345 U.S. 589:

"We think a quite different result would follow if the contract attempted to avoid applicable law..."

Obviously, this Court was saying in the last quoted passage that something (the seven factor test) *other than the contract* must determine what law is applicable *in the first place* and that then the contract itself can not shake this determination. Such a statement is completely consistent with the Jones Act itself, which provides:

"Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void." 45 U.S.C.A. § 55, incorporated by reference into the Jones Act, 46 U.S.C.A. § 688.

For this very reason it was recognized by the Court in *Voyiatzis, supra*, 199 F.Supp. at 925, and *Pavlou, supra*, 211 F.Supp. at 322, that a Greek employment contract such as the one in the instant suit can not oust the Jones Act if it is otherwise applicable.

Thus the tail can not wag the dog; the contract can not decide or even affect the question of Jones Act applicability, which must be determined on the basis of the other seven factors specified by *Lauritzen*. It is lamentable, however, that two Judges of a Court such as the Second Circuit, the experience and prestige of which as an Admiralty forum are long and well recognized, went astray and foundered into error by

allowing such a contract to decide that the Jones Act did not apply to Petitioner Hellenic in a suit against it by a Greek seaman for injuries received by him aboard ship in the port of New York, in *Tsakonites v. Transpacific Carriers Corp. and Hellenic Lines, Ltd.* (2 Cir. 1947) 368 F.2d 426, cert. den. 386 U.S. 1007.

The Tsakonites Decision

With admirable fairness the Second Circuit first set forth all the proven facts establishing Petitioner Hellenic's ties with the U.S., 368 F. 2d at 426-427. It then reviewed and discussed, with remarkable clarity and understanding, the seven factors of *Lauritzen* which *should have* governed its decision, 368 F. 2d at 427-428. After the Second Circuit had thus suspended one's expectation as to how the *Lauritzen* test would resolve the significance of those facts, this is how the Second Circuit then decided the case:

"His employment contract by its terms limits his rights to those arising under Greek law — a factor to which weight must be given because it represents plaintiff's jurisdictional choice." 368 F. 2d at 428.

* * *

"Also not to be ignored, is the fact that this Greek seaman, whose residence is in Greece, who is or is not presumed to be familiar with the rights and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be sub-

ject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: "These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs." International comity requires respect for such agreements." 368 F. 2d at 429.

These two judges, apparently conceding their own uncertainty about the case, had stated earlier in the opinion that:

"The present case presents a combination of factors the significance of which is not conclusively established by existing cases" 368 F. 2d at 428.

It is clear therefore that the two Judges of the Second Circuit majority took the easy but the wrong way out of what they admitted they found to be a difficult situation. They not only did not even follow the rules in existence in their own Circuit, as is evident from the cases from that Circuit cited in this Brief, cases which they did not even begin to indicate they meant to overrule in *Tsakonites*, but they flew right in the face of *Lauri-*

tzen's ruling out of the terms of the contract as a significant factor. Nevertheless, Tsakonites' Petition for Writ of Certiorari in this Court did not even mention this question of the contract's significance, much less present it for review. Rule 23(c) of this Court being to the effect that questions not presented for review will not be considered, Respondent can only assume that certiorari was denied in that case (386 U.S. 1007) because this Court was obliged by the Petition to look no farther than the other reasons of the Second Circuit, which, though sound, did not really decide the outcome of that case.

Respondent notes in any event that there are other compelling reasons why contracts of this type have no validity in determining choice of law. In *Retzekas v. Vyglia Steamship Co., S.A.* (District of Rhode Island 1960) 193 F. Supp. 259 at 260, the Court categorically stated:

"Under general maritime law said collective bargaining agreement has, in my judgment, no validity insofar as it attempts to apply Greek law."

The reason for this, as stated in *Voyiatzis, supra*, also involving a Greek employment contract is that:

"Seamen are traditionally wards of the admiralty, partly, it is said, because of their alleged improvident nature and the hazardous nature of their calling, and in view of the special treatment generally accorded them in the

law, it is not at all surprising that agreements by them similar to that here involved, though contained in the shipping articles, have at times simply been ignored by the courts." 199 F. Supp. at 924.

Furthermore, in *Blanco v. Phoenix Compania de Navegacion, S.A.* (4 Cir. 1962) 304 F. 2d 13, where the seaman had agreed to limit the value of any injury to each part of his body to a specific dollar amount under Spanish law, the Court thoroughly repudiated such exclusive remedy contracts in their entirety as follows, 304 F. 2d at 14-16:

"From time immemorial, seamen have been called the 'wards of admiralty,'" and perhaps no other group is provided the protective care that courts of admiralty traditionally extend to them. In Mr. Justice Story's classic statement:

"They are considered as placed under the dominion and influence of men, who have naturally acquired a mastery over them; and as they have little of the foresight and caution belonging to persons trained in other pursuits of life, the most rigid scrutiny is instituted into the terms of every contract, in which they engage. If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on

the other, the judicial interpretation of the transaction, is that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable,' *Harden v. Gordon*, 11 Fed.Cas. 480, 485 (No. 6047) (C.C.Me. 1823).

"Again, Mr. Justice Story has emphasized: 'Whenever *** any stipulation is found in the shipping articles which derogates from the general rights and privileges of seamen, courts of admiralty hold it void *** unless two things concur: First, that the nature and operation of the clause is fully and fairly explained to the seamen; and secondly, that an additional compensation is allowed, entirely adequate to the new restrictions and risks imposed upon them thereby.' *Brown v. Lull*, 4 Fed. Cas. 407, 409 (No. 2018) (C.C. Mass. 1836)."

* * *

"On examination of the contract in the present case, its inequity is manifest. In return for the absolute right to recover negligible damages, the seaman surrendered his substantial right to recover full indemnity for any loss or damages suffered in consequence of the unseaworthiness of his ship. An admiralty court would be derelict in its duty were it to honor

this agreement. We hold it invalid as a matter of law.

"Moreover, certain decisions go further, strongly indicating that any attempt whatever by a ship to limit its liability to a seaman under the General Maritime Law is against public policy and ipso facto void, irrespective of the fairness of the terms of the agreement. [Citing cases]

* * *

"These authorities are not without support in the Supreme Court. In *Cortes v. Baltimore Insular Lines*, 287 U.S. 367, 371, 53 S. Ct. 173, 77 L. Ed. 368 (1932), Justice Cardozo, after discussing the duty imposed by the law upon a ship to provide, as an incident of the employment, maintenance and cure to a seaman who falls ill during a voyage and to indemnify him for loss of damage caused by an unseaworthy condition, states categorically: '[G]iven the relation, no agreement is competent to abrogate the incident.'" 304 F.2d at 14-16.

But even if Respondent's contract with Petitioner Hellenic could decide that Greek and not U.S. law is applicable to this suit, such conclusion would leave intact the Judgment below against Petitioner Universal, which was not a party to the contract, for no one can be compelled, despite nondisclosure in a contract, to deal under that contract with persons with whom

he does not wish to deal, *Arkansas Valley Smelting Co. v. Belden Mining Co.* (1888) 127 U.S. 379, 32 L. Ed. 246.

IV

Where, in an alien seaman's tort suit for shipboard injuries invoking both the Jones Act and the general maritime law of the U.S., the U.S. District Court of the district where the seaman has obtained process against the vessel finds the Jones Act applicable but specifically predicates its award to such seaman on unseaworthiness as well as negligence, then a reviewing court holds the Jones Act inapplicable by virtue of the seven factor *Lauritzen* test, the District Court's award will be allowed to stand as being justified by a U.S. Admiralty court's discretion to retain jurisdiction of the case and apply the general maritime law of the U.S., which provides relief for unseaworthiness, where such law's only repugnance to the maritime law of the nation of the vessel's flag is procedural, not substantive, and especially where relegation of the seaman to a distant foreign forum long after the occurrence of the tort would result in substantial injustice to him by requiring him to start all over again without the help of his U.S. counsel who had prepared the proofs necessary to establish liability.

Respondent here argues, solely in the alternative that the Jones Act is held inapplicable herein, that the award to him below would still be justified on the basis of his concurrent claim for damages under the general maritime law of the U.S. for unseaworthiness.

It has always been held in cases of this type that the proper policy to be followed by an Admiralty court sitting in the place where the seaman has perfected his suit by process on the vessel itself, as here, is to favor retaining jurisdiction unless the pleader against it can sustain the burden of showing that to do so would work an injustice to it, and not vice-versa, in other words, not that the policy should be in favor of declining jurisdiction unless the adversary in plea can prove that declining jurisdiction would prejudice him; this is especially so in cases where the danger exists that the seaman will be forced, long after the occurrence of the tort, to try to prove his case in a distant foreign forum where it is uncertain that relief will be forthcoming, the right of a maritime claimant, especially a seaman, to proceed against the vessel in the place where he can find it being something akin to the sacred in Admiralty law; *THE BELGENLAND* (1885) 114 U.S. 355; *Anastasiadis v. s/s LITTLEJOHN* (5 Cir. 1965) 339 F. 2d 538; *Carbon Black Export, Inc. v. s/s MONROSA* (5 Cir. 1958) 254 F. 2d 297; *Motor Distributors, Inc. v. Olaf Pedersen's Rederi A/S, Owner of THE SUNNY PRINCE* (5 Cir. 1957) 239 F. 2d 463; *San Pedro Compania Armadoras, S.A. v. Yannacopoulos* (5 Cir. 1966) 357 F. 2d 737; *Kontos and Zarifis v. THE s/s SOPHIE C.* (E.D.Pa. 1960) 184 F. Supp. 835, 1960 A.M.C. 1344; and *Gkiasis v. Steamship YIOSONAS* (4 Cir. 1967) 387 F. 2d 460. And the decision of an Admiralty court of first instance, sitting without a jury, can not be set aside on review in the absence of a showing of gross abuse of discretion; *MacAllister v. U.S.* (1954) 348 U.S. 19; *Gutierrez v. Waterman Steamship Corp.* (1963) 373 U.S. 206; *Morales v. City of Gal-*

veston (1962) 370 U.S. 165; *Roper v. U.S.* (1961) 368 U.S. 20; and *Caribbean Federation Lines v. Dahl* (5 Cir. 1963) 315 F. 2d 370, cert. den. (1963) 373 U.S. 831.

Respondent concedes that none of the foregoing cases do anything to resolve the question of what law should apply under the instant circumstances, if the Jones Act does not, after jurisdiction was retained herein by the District Court for the Southern District of Alabama. But the case of *THE FLETERO v. Arias* (4 Cir. 1953) 206 F. 2d 267, cert. den. (1953) 346 U.S. 897, 98 L. Ed. 398, does answer this question.

THE FLETERO was a damage suit by an Argentine seaman against a *bona fide* Argentine flag and its *bona fide* Argentine corporate owner for injuries sustained aboard ship in a U.S. port; there, as here, the District Court based its award to the seaman on both negligence under the Jones Act and unseaworthiness under the general maritime law of the U.S. On appeal, the Fourth Circuit, applying the *Lauritzen* test, correctly concluded that the Jones Act was inapplicable but affirmed the award below as being equally based on liability for unseaworthiness under the general maritime law of the U.S., on the ground that such liability could be sustained by the law of Argentina without reference to the Jones Act; for there, as here, the Fourth Circuit noted, there was a requirement in the law of the flag state (Argentina) that the seaman first provoke a workmen's compensation type hearing before his claim based on unseaworthiness could become cognizable. This, the Fourth Circuit said, is merely a procedural requirement and need not be followed

in the U.S. Chief Judge Parker of the Fourth Circuit said:

"In other words, the law of the Argentine merely requires that, before resorting to its courts, an injured seaman claiming damages because of the unseaworthiness of the vessel or the negligence of the owner must first exhaust the administrative remedy provided by the Workmen's Compensation Act; this, however, is a mere matter of procedure, as to which the law of the forum and not that of the foreign nation governs. *Heredia v. Davies*, supra, 4 Cir., 12 F. 2d 500, 501; *Pritchard v. Norton*, 106 U.S. 124, 129, 1 S. Ct. 102, 27 L. Ed. 104; *Minor on Conflict of Laws*, par. 205 et seq.; *A.L.I. Restatement Conflict of Laws* secs. 584, 585." 206 F. 2d 267 at 273-274.

Here, Petitioners' argument that Respondent has not proved Greek law will not suffice; Petitioners themselves proved, by the testimony of their witness Mr. Hennessy, that Greek law allows recovery of damages for a failure of duty owed to a seaman on the part of the vessel and only predicates a prior workmen's compensation type proceeding as a prerequisite to claiming damages on this ground, testimony of which the District Court below sat up and took particular notice (A. 77-78) and on which the Fifth Circuit also specifically commented (Footnote No. 6, last paragraph, 412 F.2d at 922).

V

The certainty that an award to a seaman for injuries will be less under the law of a foreign nation than under U.S. law is not a significant consideration influencing choice of law in a seaman's tort suit; nor can U.S. law be rendered inapplicable, as providing an optional remedy cumulative to that afforded by a foreign law, by virtue of an employer-shipowner's bad faith conduct in directly paying cash to the seaman, already represented by counsel prosecuting his tort claim under U.S. law, just because the employer-shipowner chooses to designate such payment as a partial benefit due under that foreign law, since gratuitous payment of benefits, even to an unrepresented claimant, can never determine what law is ultimately applicable. /

Petitioners suggest that the real thrust of Respondent's almost five years' efforts to apply American law to this claim is a hope of greater recovery under U.S. than under Greek law. They are absolutely correct about that, but Respondent has never advanced this as a legal reason for applying U.S. law, and certainly the Judges who have had a part in the resolution of this case below in favor of Respondent can not be accused of any dishonesty in stating the reasons for their decision. Respondent merely points out that this fight over money is a two-sided one and that Petitioners, in "forsaking their [recently] espoused loyalty to [Panama] and insisting on the contractual provision for Greek law and a Greek forum" (Brackets added.) (*Voyiatzis, supra*, 199 F. Supp. at 923.) evince just as much a concern over money as Respondent does. In-

deed, a glance at *Rodriguez v. Gerontas Compania de Navegacion, S.A.* (S.D.N.Y. 1957) 150 F. Supp. 715, affirmed (2 Cir. 1958) 256 F. 2d 582 and *Morewitz v. s/s MATADOR* (4 Cir. 1962) 306 F. 2d 144, in which those Courts doled out to the injured seamen plaintiffs the extremely liberal benefits of the Panama Labor Code and Civil Code, bears out this certainty as to Petitioners' motives. What this Court is confronted with herein are two would-be international vagabonds determined to avoid a final or fair judicial reckoning anywhere, and their sanctimoniousness over Respondent's hope of a greater amount of recovery is hardly entitled to respect, especially when it appears that these Petitioners made a direct cash payment to Respondent after being placed on notice by this lawsuit that he was already represented by counsel. In so doing they have run afoul of a stern stricture as old as the law, to which a postscript has recently been added, under remarkably similar circumstances, in *Katopodis v. Liberian S/T OLYMPIC SUN* (E.D. Va. 1968) 282 F. Supp. 369. Petitioners describe their cash payment to Respondent as representing a part of the compensation due him under Greek law, but money is insusceptible of such a label, at least insofar as the same might be exploited to stigmatize the laws of the U.S. or any other law as an optionally cumulative remedy; nor can Petitioners' payment or Respondent's acceptance of such money determine what law is applicable; *Pacific Steamship Co. v. Peterson* (1928) 278 U.S. 130, 73 L. Ed. 220 (acceptance of wages and Admiralty maintenance and cure held not to preclude applicability of Jones Act); *Pritt v. West Virginia N.R. Co.* (W. Va. 1948) 132 W. Va. 184, 51 S.E. 2d 105, cert. den. (1949) 336 U.S. 961, 93 L. Ed. 1113 (acceptance of state workmen's com-

pensation benefits held not to preclude applicability of Jones Act); and *Lauritzen, supra*, (payment of foreign workmen's compensation benefits to and acceptance thereof by foreign seaman mentioned in opinion, at 345 U.S. 573-576, but not included as factor of significance in seven factor test). The former two cases also indicate that the payor of such gratuitous benefits is entitled to credit for them against the claimant's recovery under the ultimately applicable law, but Petitioners, rather than formally assert a set-off or counterclaim herein for their payment, have chosen instead to gamble all out on the clearly erroneous argument that what they have paid Respondent can determine choice of law just because they choose to designate it as benefits under one law rather than another. Respondent submits that Petitioners could not possibly be subjected to optional cumulative liabilities by virtue of the application of U.S. law to them, unless they themselves voluntarily continue to also make additional gratuitous payments under Greek law to claimants against them, but that in any event such irrational behavior on their part can never determine applicable law.

VI

International retaliation, political and diplomatic friction and a blight of shipping directed against the U.S. by a foreign nation in order to avenge the application of the Jones Act or the general maritime law of the U.S. to a corporation registered in such foreign nation is a remote and unreasonable prospect, especially where such foreign corporation has already conclusively expatriated itself from the nation of its registry and voluntarily subjected itself to the law of the State of New York and to the laws of the U.S. on many previous occasions.

Petitioners finally argue, with menacing fulminations, that application of U.S. law hereto would constitute such a breach of comity as to justify some sort of retaliation against the U.S. from Greece. Respondent does not think the Jones Act or the general maritime law of the U.S. will cause World War III or even blight international shipping, surely not as a result of their being applied in this case. What Mr. Justice Jackson said in *Lauritzen* was that if the courts of each country with which a ship has contacts were to exploit every such contact to apply its own law "a multiplicity of conflicting and overlapping burdens would blight international carriage by sea." (Emphasis added.) 345 U.S. at 581. The law of the U.S. is not in itself a multiplicity of internationally conflicting and overlapping burdens; Respondent is contending that Petitioners are subject to U.S. law, and to U.S. law only, wherever their seamen are injured, and Petitioners have not shown that they are having some problem with courts in Saudi Arabia, Pakistan, India or in any other country with which they have contacts, trying to impose their laws

on them. Indeed it is not a proximate prospect that a court of any of those countries would apply their law to a civil dispute between a Greek seaman and a shipowner of Greek birth domiciled in the U.S. and operating out of the U.S. through two Panamanian corporations, but Respondent has no doubt that Petitioners would gladly submit to such application anyway if it meant lower monetary awards to their seamen. But it is not too much to expect, consistent with the principles of comity stressed by Petitioners, that the courts of other nations, including those of Greece, will respect the decision of this Court that Petitioners are subject to U.S. law. ✓

Furthermore the distinction has been persuasively drawn between the retaliation-justifying interest of the flag nation in maintaining "discipline" and "internal order" aboard a vessel, on the one hand, and the right of a seaman to damages for negligence or unseaworthiness, on the other, in *Gerradin v. United Fruit Co.* (2 Cir. 1932) 60 F. 2d 927 at 929-930, cert. den. 287 U.S. 642, 77 L. Ed. 556; obviously, the Second Circuit appeared to indicate therein, "discipline" and "internal order" address themselves to such matters as mutinies and other criminal behavior aboard ship and have nothing to do with the applicability of civil statutes and jurisprudence to tort suits. But even if they do, Respondent submits that the application of such laws of the U.S. to this scrambled up transaction, involving a shipowner of the U.S., of Greek birth, registering his vessels to two Panamanian corporations, "would not invade the [vessel's] internal economy * * * further than has already been done" (brackets added). *Kyriakos v. Goulandris* (2 Cir. 1945) 151 F. 2d 132 at 138.

Also not to be ignored is the fact that Petitioner Hellenic has voluntarily submitted itself to the laws of the U.S. and of a State of the U.S. on many occasions already. In *Lauritzen* it was said:

"Because a law of the forum is applied to plaintiffs who voluntarily submit themselves to it is no argument for imposing the law of the forum upon those who do not." 345 U.S. at 591-592.

Obviously, it is an argument for imposing it on those who do.

Petitioners finally plead that they should not be punished by having the Jones Act applied to them just because their business requires that they have some contact with the U.S.; after all, they say, the U.S. is where the cargoes are because the U.S., owing to its prodigious wealth, is in an advantageous trade position in international commerce. But Petitioners have not demonstrated that cargoes are now, or were in 1945 when Callimanopoulos first came here, any more in the U.S. — as compared to being in Greece — than they had been from 1935 to 1938 when Callimanopoulos expanded from nothing to a fleet of eight ships as a *bona fide* Greek operator out of Greece, nor have they shown that the U.S. is or was any wealthier or in any more of an advantageous trade position — in comparison to Greece — at any one of these times more than at any other. Callimanopoulos is here for something more than U.S. cargoes; he is enjoying the protection of our form of government and law, which he obviously prefers to that of Greece; and Petitioners' comparison of him to Mr. J. Lauritzen, who has always resided in Denmark, is a fabulous conceit.

The United States is where the cargoes are; but it is also where the Jones Act is, at least for shipowners who come here for other things in addition to those cargoes, such as for the purpose of domiciling themselves under the protection of our system of government and law.

CONCLUSION

The s/s HELLENIC HERO's Greek flag is not *bona fide* and the U.S. domicile of its owner is a heavy counterweight to it establishing a contact requiring the application of U.S. law to this suit. Neither the Greek birth of the shipowner, nor the Greek employment contract nor the gratuitous payment to this seaman of benefits, designated by the shipowner as being a partial payment under Greek law, can determine that Greek law is applicable. And the application of U.S. law hereto is not in conflict with principles of comity. Accordingly, Respondent submits that the decision of the Fifth Circuit below should be affirmed.

Respectfully submitted

JOSEPH B. STAHL

804 Baronne Building

305 Baronne Street

New Orleans, Louisiana

70112

Attorney for Respondent

ROSS DIAMOND, JR.

Van Antwerp Building

P. O. Box 432

Mobile, Alabama 36601

Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, April 1, 1970, I mailed copies of this Brief, U.S. Postage prepaid, properly addressed, to the following Counsel for all adverse parties and Amici Curiae herein:

George F. Wood, Esquire;
James M. Estabrook, Esquire;
John R. Sheneman, Esquire;
Abraham E. Freedman, Esquire; and
Arthur J. Mandell, Esquire.

New Orleans, Louisiana, this 1st day of April, 1970.

JOSEPH B. STAHL

AI



APPENDIX A
DEPARTMENT OF STATE

Washington, D.C. 20520

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,
Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

A handwritten signature in cursive script, reading "Harold A. Pace".

Harold A. Pace
Assistant Chief of Protocol

A2

APPENDIX B



799 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017

YUlna 4-3434

UNITED STATES MISSION TO THE UNITED NATIONS

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Bess N. Trinks".

Bess N. Trinks
Privileges and Immunities
Officer

APPENDIX C



HELLENIC LINES LIMITED

HEAD OFFICE: PIRAEUS - GREECE

U.S.A. OFFICE:
NEW YORK: 32 BROADWAY
NEW ORLEANS: 215 INTERNATIONAL TRADE MART
LONDON REPRESENTATIVE:
THE FENTON STEAMSHIP CO. LTD.
DEVIS MARKS HOUSE, DEVIS MARKS
LONDON E.C. 5 ENGLAND
AGENTS AT ALL PORTS IN THE WORLD

SAMPLE: "HELLENIC - PIRAEUS"
ADDRESS: THE NEW "BOK" CODE
PHONE: 471.001 FOUR LINES
DIRECTION: 470.000 - 470.009
TELETYPE: 471.001 & 104 HELLENIC - PIRAEUS

RECEIVED

23 1965

PIRAEUS

PIRAEUS: August 23, 1965
ANTI MIACULI

Your Ref: PL-9071

Hellenic Lines Limited,
New York.

Dear Sirs,

M.S. "Hellenic Hero"
Zacharias Rhoditis, A.B.
August 3, 1965

We have before us your two letters concerning subject seaman dated August 16 and 19 with enclosure for both of which we thank you.

Rhoditis actually arrived in Athens on the 18th instant, was met by us at the Athens Airport, and then sent to the doctor as he was in need of some medical attendance. Dr. Katsafados who attended him and x-rayed his leg reported to us that Rhoditis beyond his fractured fibula has no other serious damage and as soon as the plaster is removed from his leg and the period of his convalescence is over he will be able bodied again with no disability at all.

We believe that Rhoditis will not deny to settle his account before the Court, as in the case of Constantinides and some others on previous occasions we did, when we will, of course, offer him all the benefits to which he is entitled under the Greek Law and let you know in due course.

Very truly yours,
HELLENIC LINES LIMITED
Claims Department

8617

Hellenic Lines Limited

3/5

Taf 18m

ACCOUNT OF WAGES

Nº 32534

Name of Seaman

PODIOS. Zaxaplos

Rating

Nautun

Date wages began,

22/7/65

Date Wages ceased,

3/8/65

Total period empl.

13 24/65 par. 8

EARNINGS

Months

Days 13 @ 40.000 mgs.

1706-8

Υπερωρια 100X 3/4

15-00 0

Katagoria kwis 1/2

2-00.0

Total \$ 34.06.8

DEDUCTIONS & ADVANCES

Kpoin 13 mids

1-16-10

" Katagoria

2-01-9

Depapille 40

0-16-6

Katagoria kwis 1/2

0-00-3

A4

APPENDIX D

Total Deductions

2 15-4

Final Balance

31-11-4

The above account of earnings and deductions is correct.

Received in full settlement of all earnings and claims

(the sum of

31-11-4) 004079 28w ipanairion

At the company 3/8/65

Master

Seaman

3/8/65



APPENDIX E

ΣΥΜΒΑΣΙΣ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ

ΣΥΜΦΩΝΩΣ ΤΩ Κ.Ι.Ν.Δ. (ΑΡΘΡΟΝ 53 ΚΑΙ 54)

1. ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

α) Ο Πλοίαρχος ή ο νόμιμος αντιπρόσωπος του Πλοίαρχου ή του Ίδιοκτήτου

του Α) Π. Μ) S, Π) Κ

Νηολογίου ΠΕΙΡΑΙΩΣ κ.α.χ.
Πλοιοκτήτου Α.Ε. ΕΛΛΗΝΙΚΗ.

Κατοίκου

336: ΑΚΤΗ ΜΙΑΟΥΤΗ αρθ. 3

Διαχειριστού συμπλοκοκτηρίας (εφ' όσον υπάρχει)

Κατοίκου

336:

άρθ.

και β) Ο Ναυτικός

γεννηθείς εν

ΜΑΓΝΗΣΙΑ τ. 1927

ΜΕΘ. 17449

συνεφώνησαν την επί του ανωτέρου σκάφους ναυτολόγησιν του δευτέρου συμβαλλομένου υπό τους κάτωθι όρους:

Ειδικότης ναυτολόγησιν

Μισθός και όροι εργασίας της Συλλογικής Σημείωσης

Διάρκεια Σημείωσης: Έν κοκλήρον τα έξι (6) μηνες αρχόμενος ες ΕΛΛΑΔΟΣ και λήγων ες ΕΛ-

ΛΛΑΔΑ. ΑΔΙΑΚΡΙΤΩΣ Αιμένων Φορτοεκφορτώσεων, μετά προσέγγισιν εις λιμένας Η.Π.Α.

ΙΝΔΙΩΝ ή και ΠΕΡΙΣΚΟΓ ΚΟΛΗΟΓ.

2. ΕΙΔΙΚΟΙ ΟΡΟΙ

α)

β)

ΕΦΑΡΜΟΣΤΕΟΣ ΝΟΜΟΣ ΚΑΙ ΔΙΚΑΙΟΔΟΣΙΑ

3) Η παρούσα σύμβασις θα δέχεται αποκλειστικώς και μόνον υπό των Έλληνικών Νήμων και των Έλληνικών Συλλογικών Σημείωσεων.

Συμφωνείται περαιτέρω, ότι οιαδήποτε άπαύση της ή διαφορά απορρέουσα εκ της παρούσης ναυτολόγησινς ή σημείωσης ή τρειδεμένης οποιαδήποτε άπαύσεως ή έμμεσης επί της παρούσης σημείωσης ή τρειδεμένης ή έμμεσης εφ' οιαδήποτε εργασίας ή ερα σχολήσεως παρασχεθείσης επί του πλοίου παρά του ναυτικού θα κρίνεται και εκδικάζεται αποκλειστικώς και μόνον παρά των Έλληνικών Δικαστηρίων.

4) Το άπορόλεον εύρίσκεται εκ

ΗΡΑΚΛΕΙΟΝ

0118Α.1955

196

ΤΑ ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

Ο Πλοίαρχος

Ο Ναυτολογιστής

Η έγκριση της:

Η παρούσα σύμβασις χρονολογείται και υπογράφεται παρά των συμβαλλομένων και της σχετικής Αρχής.

Βεβαιόται ή έγκρισις γραμμάτων εκ μέρους του ναυτολογιστή.

Η ΑΙΜΕΝΙΚΗ ΑΡΧΗ ΠΕΙΡΑΙΩΣ

APPENDIX F

RESPONDENT'S TRANSLATION OF
PERTINENT PARTS OF EMPLOYMENT CONTRACT

1. CONTRACTING PARTIES

- a) The Master or the legal representative of the Master or Vessel Owner
of the S/S, M/S, or M/V HELLENIC HERO
of the Vessel Owner "HELLENIC LINES" LTD.

* * *

APPLICABLE LAW AND JURISDICTION

This contract shall be governed solely and exclusively by the Laws of Greece and the Greek Collective Agreements.

It is further agreed that any claim or dispute flowing from this maritime hiring engagement or contract, or howsoever based directly or indirectly on this contract, or based directly or indirectly on any labor or job classification served on the vessel by the seaman, shall be adjudged and adjudicated solely and exclusively by the Courts of Greece. (Emphasis supplied.)

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Supreme Court of the United States

October Term, 1969

NO. 661

**HELLENIC LINES LIMITED and UNIVERSAL
CARGO CARRIERS, INC., *Petitioners,***

Against

ZACHARIAS RHODITIS, *Respondent*

MOTION TO LEAVE TO FILE ACCOMPANYING BRIEF AS AMICUS CURIAE IN THE ABOVE ENTITLED AND NUMBERED CAUSE

The American Trial Lawyers Association by and through Arthur J. Mandell of Mandell & Wright, Houston, Texas, a member of the Bar of this Court, as a member of the Admiralty Section of the American Trial Lawyers Association, and on behalf of the American Trial Lawyers Association, respectfully petitions this Court for leave to file a brief amicus curiae on behalf of Respondent herein, and if granted, for this Honorable Court to consider the arguments of cases in point following this statement of interest.

INTEREST OF THE AMERICAN TRIAL LAWYERS ASSOCIATION—ADMIRALTY SECTION

The American Trial Lawyers Association is a national Bar Association consisting of more than 20,000 lawyers, primarily engaged in the practice of tort law. The Admiralty Section of this Bar Association consists of a substantial number of attorneys specializing in maritime law. Said Association is vitally interested in the outcome of this case, involving as it does, the important question of whether a legally admitted and permanent resident of and domiciled in the United States, conducting business as a shipowner from New York City should not, like shipowner citizens of the United States, be subject to the same laws as United States shipowners. Or to put it differently, since United States shipowners, operating foreign registered-vessels with foreign crews, are subject to the laws of the United States, including the Jones Act, should not a legally admitted permanent resident alien enjoying the full benefits of American Law be also subject to the same laws.

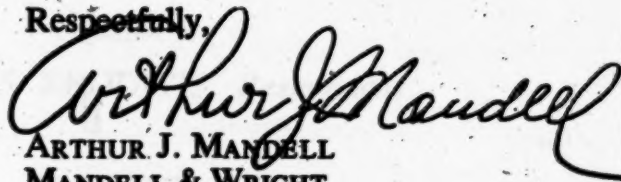
The ever increasing number of foreign flag vessels now doing business in the United States, crewed with foreign seamen but either owned, operated or controlled by American citizens subject to the laws of the United States, makes it fair and just to subject a permanent resident of the United States, conducting his business in and from the United States, obtaining its income from cargo shipped to or from the United States, to the same laws as American citizens conducting the same kind of business and with whom it is competing. This Court should resolve this and place such operations on the same footing as American

shipowners. The exodus of American shipping to foreign flags while its beneficiaries enjoy the protection of United States Laws without the obligation to comply with them places an economic burden on American shipping and to our entire economy.

The American Trial Lawyers Association has obtained and filed the written consent of counsel for all parties to file this brief as amicus curiae on Respondent's behalf.

It is respectfully prayed that this Honorable Court accept this brief Amicus Curiae.

Respectfully,



ARTHUR J. MANDELL

MANDELL & WRIGHT

19th Floor

First National Life Building

Houston, Texas 77002

*For and on behalf of the
American Trial Lawyers
Association.*

Supreme Court of the United States

October Term, 1969

NO. 661

HELLENIC LINES LIMITED and UNIVERSAL
CARGO CARRIERS, INC., *Petitioners,*

Against

ZACHARIAS RHODITIS, *Respondent*

BRIEF AMICUS CURIAE OF AMERICAN
TRIAL LAWYERS ASSOCIATION

QUESTION PRESENTED

Should a permanent resident of the United States, who does not choose to apply for nor seek United States citizenship, conducting extensive regularly scheduled shipping operations from the United States, enjoying all of the privileges and immunities of United States citizens, be immunized from the duties and obligations provided for in the Jones Act applicable to American shipowners operating foreign flag vessels?

STATEMENT OF THE FACTS

Petitioner, Hellenic Lines, Ltd., a corporation organized under Greek Law, owner and operator of twenty-three (23) seagoing vessels was at all material times the operator of the HELLENIC HERO, owned by the Transpacific Carriers Corporation, a corporation organized under the Laws of Panama with no offices nor doing any business in Panama. All of the stock of Transpacific Carrier Corporation is owned by Hellenic Lines, Ltd. Ninety-Six percent (96%) of the stock of Hellenic Lines, Ltd. is owned by its general manager, Pericles Callimanopoulos who, together with his family, have been since 1945, and are permanent residents of the United States, conducting all of the corporate business of the Hellenic Lines, Ltd. from the City of New York where a majority of its employees are employed. It owns dock facilities in Brooklyn, New York and one hundred percent (100%) of its revenue is derived from cargo being shipped out of or brought into the United States. His son, George Callimanopoulos and his family, also permanent residents of the United States, was until recently, director of the Hellenic Lines, Ltd. The base of its operation is in the United States. Petitioner, being engaged in foreign commerce of the United States in compliance with the provisions of the Shipping Act, § 801, Title 46 U.S.C.A., has filed its tariffs and other documents required by the United States Maritime Commission. *C. H. Leavell & Co. v. Hellenic Lines, Ltd.* 1969 A.M.C. 2177. Pericles Callimanopoulos, like Hellenic Lines, Ltd., has his roots within the United States. Its ships, including the HELLENIC HERO make regular trips from and to the United States on a fixed schedule. Petitioner, as a resident of the United States, has and still uses the courts of the United States to en-

force its rights and enjoys all of the rights, liberties and immunities just as any citizen resident of the United States. The only difference between an American shipowner operating vessels under foreign flags, owned by corporations organized in foreign countries even though their base of operation may be in the United States, who are subject to the Jones Act, and Petitioner, is that its general manager, the dominant mind of the Hellenic Lines, Ltd., with complete power of attorney to do any and all things in governing its business chooses not to apply for and become a United States citizen. Respectfully, the courts should not permit one doing the extensive business Petitioner does in the United States to avoid compliance with United States laws, thus granting it an unfair advantage over American Shipowners operating foreign flag vessels over the same routes.

Even assuming the veracity of the so-called diplomatic status or representative to the United Nations claimed by its dominant meteor-general manager-and owner of 96% of its stock, does not change the basic premise that one conducting its major portion of its business in this country should be subject to its laws. But there is grave doubt that Pericles Callimanopoulos is either on a diplomatic mission or a representative or attached to the United Nations. See Exhibits A and B.

The Bill of Rights does not acknowledge any distinction between citizens and resident aliens. It extends its inalienable privileges to all "persons" and guards against any encroachment of those rights by Federal and State authorities. *Bridges v. Wixon*, 326 U.S. 135, 161, 65 S.Ct. 1443, 1445, 89 Law Ed. 2103 (1945). It would be strange and we respectfully submit, not in keeping with

Congressional intent for resident aliens, who voluntarily refuse to take out American citizenship, to have the full protection of the Constitution and Laws of the United States, yet be judicially placed in a more advantageous economic position than his American citizen shipowners counterpoint by immunizing him from the duties and obligations of the Jones Act,

While *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921 (1953) in a general fashion sets out guide lines to be followed, they are neither immutable nor mechanically applied. All this Court did in *Lauritzen* was to evaluate points of contact. The seven talisman relied upon by the Second Circuit in *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (1967) are not exclusive, it permits other factors to be considered besides those enumerated in *Lauritzen*, which may be taken in consideration in determining whether they meet the "substantial" tests of Jones Act applicability. Among other existing here are:

1. The base of operation is primarily in the United States;

2. Hellenic Lines, Ltd. maintains its main and principal office in the United States where it has most of the employees;

3. Its vessels regularly depart from ports of the United States, including Mobile, Alabama, bringing in and taking out cargo on a continuous regular schedule;

4. Principal if not exclusive management of the operations of the Hellenic Lines' vessels are in the hands of the single majority stockholder (18,300

shares owned out of a total of 20,000 shares), a legally admitted resident of and domiciled in the United States, eligible to apply for citizenship in the United States,

all weigh heavily to the application of United States laws, including the Jones Act. Under the factual situation existing here, common sense and reason dictate that Hellenic Lines, Ltd. should not be given an advantage by allowing it to insulate itself from the provisions of the Jones Act simply because it constructed a foreign intermediary while maintaining permanent resident alien status in the United States.

There can be no question that a resident alien is accorded substantially the same Constitutional protection as an American citizen. No genuine distinction exists between the two and none should be created by the courts. Nor should this shipowner be allowed to enjoy the protection of the laws of the United States without meeting its obligation and responsibility imposed by those laws upon citizens of the United States engaged in the same business. In short, a person or corporation with its principal office within the United States with its major, if not total, owner of the stock is its general manager and dominant mind, with its domicile in the United States, its vessels earning all of its monies from contacts exclusively with the United States, should not be permitted to enjoy all of the immunities and privileges of the United States without assuming its correlated obligations. Justice Murphy's concurring opinion in *Bridges v. Wixon*, 326 U.S. 135, 161, states:

"The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the First and the Fifth Amendments and by the due process clause of the Fourteenth Amendment. None of these provisions acknowledges any distinction between citizens and resident aliens. They extend their inalienable privileges to all 'persons' and guard against any encroachment on those rights by federal or state authority."

This is not a case wherein the owner, general manager and dominant mind of Hellenic Lines, Ltd. or any other principal beneficiary of a corporation is merely a visitor in the United States or his domicile here is not a permanent one, or that his domicile changes from time to time. Perhaps a different standard could apply under such circumstances. Here on the contrary, we have a permanent resident living here with his family approximately thirty (30) years, doing business within the United States, accumulating its profits and benefits from such business yet, seeks to shirk its responsibilities that his competitors, i.e., the American shipowner, must meet. To impose the duties and obligations of an Act of Congress (which does not expressly exclude non-citizens) on American citizens operating foreign flag ships but not to legally admitted resident aliens domiciled in the United States who enjoy substantially the same privileges and immunities as citizens, would be destructive of the purposes the Jones Act sought to accomplish. It constitutes the rankest type of discrimination against shipowner citizens of the United

States operating the American Merchant Marine and to American seamen.

This is precisely what Judge Medina held in *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437 (C.A. 2nd Cir. 1959):

"Accordingly, the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are substantial. Thus each factor is to be 'weighed' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act."

* * * *

"Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. *Gerradin v. United Fruit Co.*, 2 Cir., 1932, 6 F.2d 927, certiorari denied 287 U.S. 642, 53 S.Ct. 92, 77 L.Ed. 556; *Carroll v. United States*, 2 Cir., 1943, 133 F.2d 690; *Zielinski v. Empresa Hondurena de Vapores*, D.C.S.D.N.Y. 1953, 113 F.Supp. 93; *Torgersen v. Hutton*, 2nd Dept. 1934, 243 App. Div. 31, 276 N.Y.S. 348, affirmed, 1935, 267 N.Y. 535, 196 N.E. 566, certiorari denied, 1935, 296 U.S. 602, 56 S.Ct. 118, 80 L.Ed. 426. This is essential unless the purposes of the Jones Act are to be frustrated by

American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag."

In *Kyriakos v. Goulondris*, 151 F.2d 132 (1945), Judge Augustus Hand, an outstanding Admiralty Judge, said:

"The intention of Congress to benefit American seamen would not be served by a contrary construction of the statute, since it would tend to encourage the hiring of foreign seamen in American ports in preference to American seamen because the aliens would not have the right of suit against their employers if injury should occur in those ports, while American seamen would. A similar line of reasoning has been set forth by the Supreme Court in *Strathearn S.S. Co. v. Dillon*, supra, 252 U.S. at pages 354, 355, 40 S.Ct. at pages 351, 352, 64 L.Ed. 607, in connection with another section of the statute."

The Fifth Circuit in *Arthur v. Compagnie Generale Transatlantique*, 72 F.2d 662, held "nationality" unimportant and the Jones Act applicable in an action brought by an alien stevedore injured on a foreign ship in the Canal Zone. *Uravic v. F. Jarka Co.*, 282 U.S. 234, 51 S.Ct. 111.

As Senator Jones stated in considering the act, one of the purposes of the 1920 amendment was to bring the foreign seamen up to a level with our seamen by giving them the same remedy in our own ports that our seamen have.

The decision of the Court of Appeals, if allowed to stand, would be an invitation to American shipowners to set up dummy corporations, transfer its stock to a legally

permanent alien resident within the United States and by such action immunize itself against the duties and obligations of the Jones Act, thus nullifying Congressional enactments. It would be an open invitation to use subterfuge and stock manipulations for the purpose of avoiding stringent shipping laws by seeking foreign registration eagerly offered by some foreign country. This Court recognized this danger in *Lauritzen*, supra, 345 U.S. 587 as follows:

"* * * Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which the law placed upon them. ..."

This Court refused to permit a somewhat similar subterfuge as bringing about a harsh and incongruous result in *Reed v. Yaka*, 373 U.S. 410, 83 S.Ct. 1349 (1963) and imposed liability on a shipowner who sought to immunize himself from liability for compensatory damages by bare boat chartering its vessel to the stevedoring company charged with discharging the cargo. It thus sought to limit its obligations under the exclusive provisions of the Longshoremen and Harbor Workers Act, Section 901, et seq., Title 33, U.S.C.A. even though its negligence or unseaworthiness may produce tragic injuries.

Judicial sanction for such double talk would frustrate the stated Congressional policy of equalizing operating costs between American and competing foreign vessels. (Hearings 85th Congress, First Session, March 27, 1957). To achieve the ends enunciated by Representative Bonner, Congress has sought to eliminate or at least reduce, the

competitive advantage of foreign flag operators by equalizing operating costs of American and foreign flag ships. This was accomplished by the enactment of the LaFollette Seamen's Act of 1915 (28 Statute U.S.C.A. 85) and its amendatory provisions contained in the Jones Act of 1920, (41 Statute 1007, 46 U.S.C.A. 688 et seq.). The hearings which preceded the passage of both Acts contain frank discussions of Congressional motives namely, elimination of foreign competition by equalization. (See Harold on "Some Problems Arising Out of Foreign Flag Operations", 28 Fordham Law Rev. 295-305 et seq.).

The extensive operation of this Respondent can be found in the record of *Hellenic Lines, Limited v. Gulf Oil Corporation*, 340 F.2d 398. See Note 1 on Page 400 (2nd Cir. Docket #28885). In that case the same Mr. Callimanopoulos testified as follows:

"I tell you it's as if you asked if the city informed citizens that there is a ferry running on a specific hour from here to Staten Island. It's the same thing. We're here, established from before the war, and after the war, with nothing but regular services. And there is no person in the trade who does not know what we are doing."

There can be no serious question of substantial contacts of Hellenic Lines with the United States, if, as stated in Gilmore & Black, page 388, Section 6-64:

"Finally American shipowners will not be allowed to evade their obligations under American law by taking out a nominal foreign registry, directly or through the devise of a wholly owned or controlled foreign subsidiary, and without regard to terms of the shipping articles stipulating that the rights of crew mem-

bers are to be governed by the law of the country of the registry."

it ought not to be permitted here.

It is abundantly clear under the facts of this case, that the Hellenic Lines, Ltd. and Callimanopoulos have substantial contacts with the United States. Its shipping and operations are controlled by persons and firms largely based in the United States.

Except for *Tsakonites*, supra there is no Appellate decision denying Jones Act coverage to foreign seamen injured in the United States port where the employer has substantial contacts with the United States and the principal owner of the stock of the operating corporation was and still is a legally permanent resident of the United States. *Ventiadis v. C. J. Thibodeaux & Co.*, 295 F. Supp. 135. *McCulloch v. Sociedad Nacional, etc.*, 83 S.Ct. 671, 372 U.S. 10 (1963) is not controlling. In that case this court simply held that the National Labor Relations Act does not apply.

Unless this Court lays down the rule that notwithstanding Respondent's extensive operation within the United States, its regular schedule of ships bringing in and taking out cargo from the United States, the controlling manager and owner of its business a legally permanent resident alien within the United States is none the less immunized of the duties, and obligations imposed on the American shipowners simply because through his own volition he fails to apply for and become a citizen of the United States, then it must follow that a permanent resident of the United States, conducting his business within the United States, must subject himself to the same duties and obligations as an American shipowner.

CONCLUSION

To grant such unequal advantages constitute a delusion if not distraction of Congressional intent to equalize in part, at least, the disparity between foreign shipowners and those operated by American interest, and the danger of erosion of these established principles which Petitioners seek here to establish, presents compelling reasons for this Court to affirm the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,



ARTHUR J. MANDELL

of

MANDELL & WRIGHT

19th Floor
First National Life Building
Houston, Texas 77002

*For and on behalf of the
American Trial Lawyers
Association*

17.

EXHIBIT A



DEPARTMENT OF STATE

Washington, D.C. 20520

FEB 19 1968

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,
Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Harold A. Pace".

Harold A. Pace
Assistant Chief, of Protocol

18

EXHIBIT A



799 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017

YUham 6-3034

UNITED STATES MISSION TO THE UNITED NATIONS

APR 3 - 1968

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Bess N. Trinks".

Bess N. Trinks
Privileges and Immunities
Officer

19

EXHIBIT B



DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED
JUN 23 1969
RECEIVED

June 19, 1969

Mr. Hoyt S. Haddock
Executive Director
AFL-CIO Maritime Committee
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Hoyt:

This will refer to your letter of June 17 regarding Pericles G. Callimanopoulos. I have been informed by the Protocol Office of the United Nations that they have no record of Mr. Callimanopoulos serving in any capacity at the United Nations.

Sincerely yours,

A handwritten signature in cursive script, reading "Oscar H. Nielson".

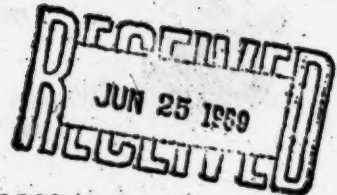
Oscar H. Nielson
Executive Director

EXHIBIT B



DEPARTMENT OF STATE

Washington, D.C. 20520



June 23, 1969

Mr. Hoyt S. Haddock
Executive Director
AFL-CIO Maritime Committee
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Haddock:

Your letter of June 17, 1969, requesting information whether Mr. Pericles G. Callimanopoulos is a representative of the Greek Government in the United States has been brought to my attention.

The files of the Office of Protocol failed to disclose any registration, present or past, under the name of Mr. Pericles G. Callimanopoulos. This would indicate that Mr. Callimanopoulos has not been recognized as a representative of the Greek Government in the United States.

Sincerely,

Marion H. Smoak
Assistant Chief of Protocol

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 157

WELLES COAST LIMITED AND UNIVERSAL CARGO SHIPPERS, INC.
Petitioners

vs.
ZACHARIS WOODS
Respondent

SUPPLEMENTAL BRIEF OF PETITIONERS

JAMES E. HARRIS
Counsel for Petitioners

JAMES E. HARRIS
Counsel for Respondent

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONERS

Subsequent to the dispatch of Petitioners' brief to the printers, the United States District Court for the Eastern District of Virginia rendered its decision in five cases pending there which involve actions by seamen against Petitioners herein. These cases are essentially identical to the case at bar. In reaching its decision that Court followed the **Tsakonites** case from the Second Circuit and re-

APPENDIX

[*1] In the United States District Court for the
Eastern District of Virginia
Newport News Division

Soterios Hiotis,	Libelant,	} In Admiralty No. 724.
v.		
Greek S/S HELLENIC GLORY, etc., et al.,	Respondents.	
Michael Mihalarias,	Libelant,	} In Admiralty No. 739.
v.		
Greek S/S GRIGORIOS C. III, etc., et al.,	Respondents.	
George Tassou,	Libelant,	} In Admiralty No. 740.
v.		
Greek S/S HELLENIC TORCH, etc., et al.,	Respondents.	
Panayiot Alexopoulos,	Libelant,	} In Admiralty No. 742.
v.		
Greek S/S HELLENIC LAUREL, etc., et al.,	Respondents.	
Theoklitos Symeonidis,	Libelant,	} In Admiralty No. 756.
v.		
Greek S/S HELLENIC HERO, etc., et al.,	Respondents.	

[2] **MEMORANDUM, FINDINGS OF FACT, AND
CONCLUSIONS OF LAW**

These five cases, all involving claims for alleged personal injuries or illnesses, were filed by Greek seamen. The issue involved is the choice of law with the seamen contending that they should be permitted to file their actions

Numbers appearing in brackets in text indicate page numbers of original memorandum, findings of fact and conclusions of law.

under American law, specifically the Jones Act, whereas the shipowner contends that Greek law should control the final outcome. In **Tsakonites v. Transpacific Carriers Corp.**, 368 F. (2d) 426 (2 Cir., 1966), cert. denied, 386 U. S. 1007, the Second Circuit decided the controversy in favor of Greek law. However, in **Hellenic Lines v. Rhoditis**, 412 F. (2d) 919 (5 Cir., 1969), cert. granted, a contrary conclusion was reached. We agree with the Second Circuit and hold that Greek law applies.

The Court makes the following—

Findings of Fact

1. These five cases, all involving suits by Greek seamen primarily for personal injuries or illnesses received while serving aboard different vessels operated by Hellenic Lines, Ltd., have a common issue of law and fact on the preliminary question of what law should be applied to these actions. While American wage law violations have also been alleged in each of the five libels,¹ in addition to claims for damages [3] and maintenance and cure, the Court reserves its ruling on the wage claims until a later time.

2. The actions are against the owners and operators of five **Greek Flag** vessels. In addition to the personal injury or illness claims, there are allegations of maintenance and cure.

3. All five libelants are Greek citizens. At least four of them are residents of Greece; one is possibly now residing in Canada. Hellenic Lines, Ltd., against whom the force of these actions is directed, is a Greek corporation having

¹ While the libels allege wage claims, four of the seamen have testified and either denied that any wages were due or have not asserted same. However, if, in fact, there was any violation of the American wage statute, as applied to foreign vessels, this would not foreclose the right of the particular seaman to recover.

been continuously in existence since its incorporation in 1934. Hellenic Lines was the employer of the five seamen and completely operated, managed, controlled and crewed the five vessels involved in these actions.

4. Hellenic Lines was the registered owner of the SS GRIGORIOS C. III. The registered owners of the remaining four vessels were as follows: SS HELLENIC GLORY, owned by Transpacific Carriers Corporation; SS HELLENIC TORCH, owned by Transpacific Carriers Corporation; SS HELLENIC LAUREL, jointly owned by Transpacific Carriers Corporation and Universal Cargo Carriers, Inc.; SS HELLENIC HERO, owned by Universal Cargo Carriers, Inc. Transpacific Carriers Corporation and Universal Cargo Carriers, Inc., were both Panamanian corporations established about 1956 to own these and other vessels operated by Hellenic Lines.

5. All vessels flew the flag of the Kingdom of Greece.
[4] 6. More than ninety-five percent of the stock of Hellenic Lines, Ltd., was owned by Pericles Callimanopoulos, a Greek citizen presently residing in the United States. Transpacific and Universal were subsidiary corporations of Hellenic Lines, Ltd., which owned all of their stock, with the exception of qualifying shares owned by the Panamanian directors.

7. In addition to flying the flag of the Kingdom of Greece, each vessel had Greek articles; each was registered under the laws of Greece with a home port designated as Piraeus, Greece. The vessels were completely manned and crewed by Greeks.

8. Each of the Libelants was hired by and signed a contract of employment in Greece with Hellenic Lines and was thereafter signed on Greek articles of the respective vessels in various ports. The contracts of employment each provided that the seamen were signing for one round voyage. The contracts of employment further provided

for the exclusive application of Greek law in paragraph 3 thereof as follows:

"This contract is governed exclusively by Greek Laws and Greek Collective Bargaining Agreements.

"It is moreover agreed that any claim or contention resulting from this enlistment or contract or based in any manner directly or indirectly on this contract or based in any manner directly or indirectly on any work or occupation undertaken on the ship by the seaman will be considered and judged exclusively and only by Greek Courts of Justice."

[5] The Collective Agreement referred to was a contract between a seamen's union and the shipowners which provided in Chapter XXIX:

"Solution of Individual Disputes"

"1. Individual contracts of employment, on which the present Collective Agreement applies, will be governed exclusively, as far as any claim or right arising out of the seafarer's employment, including claims on account or illness or accident, by the provisions of the present Collective Agreement and Greek Law, being judged exclusively by the competent Greek Law Courts, resort to any foreign Courts and to any foreign Law being prohibited and expressly ruled out.

.

"3. It is hereby mutually agreed, that non-observance of the provisions of the present Chapter by a seafarer constitutes a break of duty."

9. There is no direct evidence as yet reflecting that the five seamen were members of a seamen's union, but the Court is confident that such fact will be established. In any event, there is nothing illegal or improper in requiring a nonunion seaman to be bound by the same contractual terms as a union seaman.

10. After the seamen signed their contracts of employment in Greece they served aboard their respective vessels as follows:

Libellant and his rating	Signed on ²	Signed off ²	Place of accident or where illness first manifested
HIOTIS, a.b. (HELLENIC GLORY) Admiralty 724	Sept. 24, 1961 Candia, Crete (a Greek island)	Sept. 7, 1962 Heraklion, Crete (Greece)	T.B. diagnosed at U. S. ports
MIHALARIAS, a.b. (GRIGORIOS C. III) Admiralty 739.	April 18, 1962 Heraklion, Crete (Greece) (April 17, 1962, according to libellant)	June 28, 1963 New York, N. Y. for medical treatment and repatriated to Greece	Eye injury at Genoa, Italy April 23, 1963
TASSOU, carpenter (HELLENIC TORCH) Admiralty 740	August 30, 1962 Port Said, Egypt	March 4, 1963 Charleston, S. C. because of illness and repatriated to Greece	T.B. first diagnosed at U. S. ports
ALEXOPOULOS, wiper (HELLENIC LAUREL) Admiralty 742	June 28, 1961 Emden, Germany (vessel began maiden voyage here)	August 1 or 2, 1961, left vessel at New York where he was classed a deserter by the Master. He later returned to Greece according to his libel	Accident or illness allegedly occurred at sea on July 8, 1961
SYMEONIDIS, chief officer (HELLENIC HERO) Admiralty 756	June 1, 1963 Heraklion, Crete (Greece)	August 24, 1963 Bombay, India, because of illness and repatriated to Greece	Illness (reactivation of T.B.) manifested itself while vessel was at or near Karachi, Pakistan, and Bombay, India

² Seamen on Greek vessels do not personally sign the articles, but their names are entered, for them, normally by the counsel.

11. Three of these seamen claim damages for illness (tuberculosis) and the other two claim damages for an [7] accident. It is virtually impossible for the Court to determine where the tuberculosis was first contracted by

the seamen in question. No evidence has been introduced, to date, nor is it likely that it could be produced, which could pinpoint the particular place of the origin of the tuberculosis since each of the vessels in question was continually moving from port to port during the seamen's employment. In the Symeonidis case, the libelant testified that he first got sick on the SS WORLD PEACE, a vessel aboard which he was serving prior to his service on the HELLENIC HERO, and which also is the subject of a suit by this seaman pending in this court (Admiralty No. 778), and which has been consolidated with these five cases for the purpose of determination of liability on the merits.

While it is undisputed that Mihalarias received an eye injury in an accident in Genoa, Italy, while serving on the SS GRIGORIS C. III, the evidence thus far introduced in the case of **Alexopoulos v. The SS HELLENIC LAUREL** would indicate that this seaman sustained no accident but merely suffered from a scalp condition diagnosed by two doctors as being a form of dandruff.

In any event, all of the seamen returned to Greece and received medical treatment there, the three with tuberculosis being given free treatment at the Seamen's Home which is specially set up to treat this disease. There is no suggestion from the foregoing that any seaman is cured.

[8] 12. In the three illness cases the claims of the three seamen have been litigated in the courts of Greece. In each of these three cases the Greek courts ruled in favor of the shipowner and declared that the amount tendered was the proper amount to which the seamen were entitled under Greek law. The seamen have either accepted the amount of the judgment or the sum of money has been deposited by the shipowner with a public notary and can be claimed by the seamen at anytime.

Michael Mihalarias, through counsel, filed a suit against Hellenic Lines, Ltd., in the Court of First Instance of Piraeus seeking damages for his eye injury under Greek law (Act 551/1914). He was awarded a judgment on December 20, 1968, in the Court of First Instance of Piraeus and this judgment for 41,986 Drachmae (including court costs for a total of approximately \$1,400) was paid and satisfied on December 24, 1968.

No Greek action has been filed in the fifth case, that of Alexopoulos.

The foregoing Greek judgments are not, at this time, deemed to bar any of these proceedings.

13. Much evidence and discovery has been taken concerning Hellenic Lines, Ltd., and its chief stockholder, P. G. Callimanopoulos. Callimanopoulos has always been the primary stockholder in Hellenic Lines ever since its incorporation in Greece in 1934. Hellenic Lines started out as a small shipping operation, at first limited to Mediterranean and European ports, but was extended to United States ports before or during [9] World War II. At the present time in addition to Hellenic Lines' European and Mediterranean trade routes, it has routes between the United States and Near East ports and the United States and Far East ports such as Pakistan, India, and Burma. At the time of Callimanopoulos's discovery deposition, Hellenic Lines operated 29 vessels, 16 of which were also owned by Hellenic Lines and the remaining 13 owned by one or both of the two Panamanian subsidiary corporations. The vessels all make occasional stops in Greece either for cargo or crew changes and provisions or both.

14. Hellenic Lines' home office has always been in Piraeus, Greece, where about 75 employees work. After World War II, a branch office of Hellenic Lines was established in New York and this office has now grown to

the point where it is larger than the office in Piraeus in that approximately 100 persons are employed there. Hellenic Lines also has a very small office in New Orleans, Louisiana, and other offices or agents at various ports throughout the world. Callimanopoulos himself, the general manager, moved to the United States in 1945 or 1946, and later became a resident alien. He lives in a home in Greenwich, Connecticut, and has his office in New York City. However, he also travels to various countries of the world in connection with the business of Hellenic Lines and, according to Captain Makris, still maintains a home in a suburb of Athens, Greece. Callimanopoulos was not interrogated as to a home near Athens.

[10] 15. The financial operations of Hellenic Lines in the United States exceed its financial operations in any other one country. For the purpose of determining the issues now raised in these cases, the Court assumes that fifty-one percent (51%) of the substantial contacts of Hellenic Lines have been within the United States.

16. The board of directors of Hellenic Lines, Ltd., consists entirely of Greek citizens, with one exception:

P. G. Callimanopoulos, General Manager, a resident of the United States

G. P. Callimanopoulos, son of P. G. Callimanopoulos, and resident of the United States (who no longer takes an active part in the company)

Takis Zakas, President, a resident of Greece

Theodore Pangos, Vice President, a resident of Greece

P. Papadopoulos, a resident of Greece

L. Antonopoulos, a resident of Greece

T. Tagaris, a resident of England

Frank Slater, a citizen and resident of the United States, who is described by Mr. Callimanopoulos as an "honorary" director who has never attended any meeting of the company.

The Court is uncertain as to the status of a so-called "honorary" director, but assumes that it is a director who never attends any meetings.

17. While Callimanopoulos testified that President Zakas is the principal executive officer and that Vice President Pangos is the managing director, there is no doubt that Callimanopoulos, being general [11] manager and principal stockholder, is the dominating and controlling factor in Hellenic Lines.

18. Hellenic Lines, Ltd., according to its original charter in 1934 which was good for twenty (20) years, had 20,000 shares outstanding, and Article 23 of the Articles of Association of the corporation requires each director to be the holder of at least 50 shares. There is no evidence as to the current requirement as to holdings.

19. Hellenic Lines' operations are far flung, it having substantial business contacts with many countries in the world. Most cargo matters are handled from the New York Office while the Piraeus Office issues instructions concerning the internal management of the vessels such as crew matters. The Court holds that there are substantial business and financial contacts by Hellenic Lines with the United States and also with Greece, as well as with other countries. While exact percentage figures showing the amount of business done in each country has not been required to be produced by the respondents, the Court holds and the respondents concede that more business of Hellenic Lines originates and terminates in the United States than with any other single country. The Court further holds that since the ultimate control of all three of the respondent corporations is with P. G. Callimanopoulos, that this ultimate control is exercised primarily in the United States from his office in New York.

[12] 20. In 1955, the wife of P. G. Callimanopoulos, Mrs. Anna Callimanopoulos, a resident of Greenwich Connecti-

cut, received a broad power of attorney for the purpose of handling the affairs of Hellenic Lines, Ltd., whenever her husband might be absent from the United States.

In the words of the minutes of the Board of Directors dated September 1, 1955:

"* * * the Director General, Mr. Pericles Kallimanopoulos (sic) will probably be absent from New York for a long period, * * * it is therefore necessary that the Board of Directors proceed to the appointment, as a general attorney and representative of the company of Mrs. Anna, wife of Pericles Kallimanopoulos (sic).

"Passing resolutions by unanimous vote, the Board of Directors authorizes Mrs. Anna, wife of Pericles Kallimanopoulos (sic), resident of Greenwich, Connecticut, United States of America, and constitutes her as representative of the company * * *"

21. Callimanopoulos refers to a Mr. Cajzer, a resident of the United States, as the treasurer of Hellenic Lines. Another witness called Cajzer a "paymaster". Callimanopoulos thinks that Cajzer is a citizen of the United States.

[13] 22. The Accounting Department of Hellenic Lines, Ltd., is headed by a Mr. Arnold with offices at 39 Broadway, New York, New York.

23. Gerald Hennessy, the Claims Manager of Hellenic Lines, Ltd., is a United States citizen with offices at 39 Broadway, New York, New York.

24. Universal Cargo Carriers, Inc., and Transpacific Carriers Corporation are Panamanian corporations whose corporate papers were drawn up by a lawyer in New York. These two Panamanian corporations each have a registered office in Panama, but neither actually has an

office in Panama in the sense that Hellenic Lines, Ltd., has in New York. No business is conducted in Panama except corporate paperwork. As noted above, the beneficial interest of better than ninety-five percent of the stock of these corporations is owned by Mr. P. G. Callimanopoulos, a Greek citizen who has been living in the United States since 1945 or 1946.

25. The names, addresses, and citizenship of the officers and directors of Universal Cargo Carriers, Inc., are not disclosed by the record. Callimanopoulos stated, at the time of his deposition, that he would provide this information. He also indicated that "for all he knows" they may be United States residents. The Court does not believe it material in any event as the stock was wholly owned by Hellenic Lines. It is likely that they are Panamanian citizens but, undoubtedly, they serve at the direction of Callimanopoulos.

[14] 26. The officers of Transpacific Carriers Corporation are as follows:

President—Ida I. DePreciado

Vice President—Ricardo A. Durling

Secretary-Treasurer—Dageberte Perez M.

27. While the principal office of Hellenic Lines is located at 39 Broadway, New York, New York, the home office is in Greece. Hellenic Lines owns the entire pier at the foot of 57th Street in Brooklyn, New York. The record is not clear on the point, but it appears that Hellenic Lines has approximately 100 longshoremen or dock workers on its payroll in the New York Office, presumably to maintain the Brooklyn pier.

28. The largest part of the business of Hellenic Lines, Ltd., is conducted from the United States in regularly scheduled general cargo services operated from the United States East Coast and Gulf Ports to the Near East and

the Far East using nineteen of the twenty-nine Greek flag vessels owned by the Callimanopoulos interests and, in addition, utilizing forty-two non-Greek time-chartered flag vessels for undisclosed periods of time in the five years prior to January 10, 1964.

29. More than fifty percent (50%) of the dollar volume of the cargo business of Hellenic Lines is derived from cargo originating or terminating in the United States. The volume of cargo business done by Hellenic Lines in Greece is small and, as heretofore [15] indicated, the vessels visited Greece relatively few times, generally for a crew change or on long voyages involving Pakistan or Burma. In some instances, when the Suez Canal was open, the new crew members were flown to Suez.

30. There is a conflict as to whether new Articles, opened generally every six months, were usually opened in New York. In any event, wherever opened, the record indicates that the vessels involved herein were engaged in voyages beginning and ending in the United States.

Conclusions of Law

1. These cases all contain a common question of law and fact as to the preliminary issue of applicable law. The same question regarding the law to be applied to claims of Greek seamen suing Hellenic Lines has recently been decided in the Courts of Appeals for the Second Circuit and the Fifth Circuit. The Second Circuit decided the question in favor of Greek law. **Tsakonites v. Transpacific Carriers Corp.**, 368 F. (2d) 426 (2nd Cir., 1966), cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. (2d) 434. However, the Fifth Circuit has decided the question in favor of the application of American law. **Hellenic Lines, etc. v. Rhoditis**, 412 F. (2d) 919 (5th Cir., 1969), cert. granted. For the reasons stated below, the Court holds that Greek law should be applied in these cases as was done in the **Tsakonites** case.

[16] A. Any discussion of the question of applicable law must start with the leading case on this point, **Lauritzen v. Larson**, 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953), where the Supreme Court listed and discussed seven factors to be considered in determining the proper choice of law: (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance or domicile of the injured party, (4) the allegiance of the shipowner, (5) the place of the contract, (6) the inaccessibility of the foreign forum, and (7) the law of the forum. We shall take up these points in order as applied to the facts in the present case.

(1) Place of the Wrongful Act

This factor was given little weight by the Supreme Court which later decided in **Romero v. International Terminal Operating Co.**, 358 U. S. 354, 79 S. Ct. 468, 3 L. Ed. (2d) 368, reh. denied 359 U. S. 962, 79 S. Ct. 795, 3 L. Ed. (2d) 769 (1959), that the place of the tort was a purely fortuitous circumstance and should not control.

In the three present illness cases, since it cannot be determined precisely where the tuberculosis was first contracted or first arose, this factor does not favor the application of the law of any particular country other than perhaps that of the law of the flag (Greece).

In the case of the injury to Mihalarias, this occurred at Genoa, Italy, and would favor the application of Italian law. In the case of the injury [17] to Alexopoulos, this occurred at sea and likewise does not favor the application of any law other than that of the law of the flag (Greece).

(2) Law of the Flag

In **Lauritzen**, *supra*, 345 U. S. at 584, the Court stated that "perhaps the most venerable and universal rule of

maritime law relevant to our problem is that which gives cardinal importance to the law of the flag." At 585-586, the Court continued:

"It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law. As this Court held in **United States v. Flores**, *supra*, at 158, and iterated in **Cunard Steamship Co. v. Mellon**, *supra*, at 123:

'And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require * * *'

[18] "This was but a repetition of settled American doctrine."

"These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears."

The Fourth Circuit, in **Southern Cross Steamship Co. v. Firipia**, 285 F. (2d) 651 (4 Cir., 1960), following **Lauritzen**, acknowledged that the law of the flag is the most important factor in determining applicable law, but went on to add that "The flag must not be one of convenience merely but bona fide." The Court held that the Honduran flag of a vessel whose only contacts with Honduras were the flag and the articles was nothing more than an illusory flag of convenience. The Court then stated that since substantial contacts existed with the United States, the District Court was warranted in applying American law.

Here the Greek flag of the Hellenic Lines is bona fide and not merely a flag of convenience. In addition to flying the flag of the Kingdom of Greece, each vessel had Greek articles, each was registered under the laws of Greece with a home port designated as Piraeus, Greece. The vessels were completely manned and crewed by Greeks who signed contracts of employment in Greece (agreeing to be governed by Greek law). Hellenic Lines owns one of the vessels outright and owns virtually all of the stock of the subsidiary corporations [19] which, in turn, own the other four vessels. Hellenic Lines is a Greek corporation having been continuously in existence as such since its incorporation in 1934 and operating a large office (with approximately 75 employees) in Athens, as well as its New York Office. Callimanopoulos, the general manager and owner of most of the stock, is a citizen of Greece although he lives in Connecticut as a resident alien of the United States.

Since the flag is not merely one of convenience, it is entitled to the strong significance given to it as a key factor under **Lauritzen** in determining the applicable law.

(3) Allegiance or Domicile of the Injured

Next to the law of the flag, the Supreme Court gives the most importance to the allegiance or domicile of the injured along with the fourth factor concerning the allegiance of the shipowner. Here all five seamen were Greek citizens and domiciled in Greece which argues for the application of Greek rather than American law.

(4) Allegiance of the Shipowner

Hellenic Lines was the registered owner of the **GRI-GORIOS C. III** and the owner pro hac vice of the remaining four vessels which were registered in the names of

the Panamanian corporations whose stock was owned by Hellenic Lines. There is no doubt from the facts that Hellenic Lines is a bona fide Greek corporation having been in existence and having had its home office in Piraeus, Greece, since 1934.

[20] If we look beyond the corporate structure to the allegiance of the principal stockholder, P. G. Callimanolopoulos, we find that he is and always has been a Greek citizen and therefore owes allegiance to the Kingdom of Greece even though he has become an American resident. No case before *Rhoditis, supra*, has held that mere residence in the United States by the principal officer of a foreign shipowner is enough to disregard the vessel's flag and apply American law. While some cases have applied American law in instances of American citizens operating foreign flag vessels, we note that even the factor of American citizenship by the shipowner is not always enough, standing alone, to apply American law. *Mpampouros v. Steamship Auromar*, 203 F. Supp. 944 (D. Md., 1962); *Moutzouris v. National Shipping & Trading Co.*, 194 F. Supp. 468 (previous opinion 196 F. Supp. 82) (S. D. N. Y., 1961); *Markakis v. The Mpampa Christos*, 161 F. Supp. 487 (S. D. N. Y., 1958); *Mproumeriotis v. Seacrest Shipping Co.*, 149 F. Supp. 265 (S. D. N. Y., 1957); *Argyros v. Polar Compania De Navegacion, Ltda.*, 146 F. Supp. 624 (S. D. N. Y., 1956).

(5) Place of Contract

While this factor was not given too much importance by the Supreme Court, we should point out that all five libelants signed contracts of employment in Greece prior to joining their vessels in Greece (Hiotis, Mihalarias and Symeonidis) while the other two were sent from Greece to join their vessels (Tassou joined at Port Said and Alexopoulos at Emden, Germany). [21] The factor of the

place of the contract therefore favors the application of Greek rather than American law.

Furthermore, since each of the libelants agreed in his contract of employment for the exclusive application of Greek law, there is no reason each should not be bound by his agreement to have Greek law applied if not contrary to public policy. We know of no reason or public policy why a Greek seaman, who signs a contract of employment in Greece with a Greek corporation (Hellenic Lines) for service aboard a Greek flag vessel, crewed and operated by Greeks, should not be bound by his agreement to have his rights determined by Greek law. We refrain from commenting as to the agreement that only Greek courts are vested with jurisdiction as to any controversy. Indeed the Supreme Court in *Lauritzen* indicates that such a contract of this type should be upheld. The Court stated, 345 U. S. at 588-589, 73 S. Ct. at 931-932:

“ * * * We face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag—state as their governing code. This [22] arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. *The Belgenland*, 114 U. S. 355, 367, 5 S. Ct. 860, 865, 29 L. Ed. 152; *The Hanna Nielson*, 2 Cir., 273 F. 171. We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship.”

(6) Inaccessibility of Foreign Forum

This factor which did not receive particular attention by the court, like the other factors considered, favors the application of Greek rather than American law. Since all five seamen are Greek citizens and residents and returned to Greece following their service on the vessels in question (although one seaman may now reside in Canada), there certainly has been no inaccessibility so far as Greece is concerned. While it appears that four of the five cases have been litigated in Greek courts, with judgments rendered, awarding the seamen certain sums, the actions in Greece were all instituted many months after the filing of the cases in the United States District Court for the Eastern District of Virginia and, of course, without the knowledge and consent of counsel for libelants in the United States. Whether the Greek actions were the result of collusion between Hellenic Lines or its insurance carrier and the seamen remains an open question. While the Court does not now decide the question, the [23] Greek court judgments may possibly have binding effect on the present cases on the principle of international comity. **Hilton v. Guyot**, 159 U. S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895); **Ingenohl v. Walter E. Olsen & Co.**, 273 U. S. 541, 47 S. Ct. 451, 71 L. Ed. 762 (1927).

(7) Law of the Forum

The Supreme Court in **Lauritzen** rejected the contention that the law of the forum should be given any significant weight in determining what law is to be applied and need not be considered further here.

B. Each of the relevant factors of **Lauritzen** points towards the application of Greek rather than American law. The injuries did not occur in the United States and where the illness originated can never be precisely determined; there is a bona fide Greek flag; the seamen are Greek;

the shipowner is a citizen of Greece although its principal officer is a resident alien of the United States; the contracts were signed in Greece; and it has been possible for the seamen to litigate their cases in Greece.

Libelants list a number of factors in support of a "balancing of contacts" theory: (a) the principal owner of Hellenic Lines has regularly resided in the United States since about 1945 and has been a permanent resident alien since about 1951; (b) the control of the corporation whenever the owner is absent from the United States is vested in his wife, a resident of the United States; (c) more than 50% of the dollar volume of the cargo business of Hellenic Lines is derived from Cargo either originating or terminating in the United States; (d) regularly scheduled cargo service originates from the United States. In support of this theory, libelants [24] cite *Rhoditis, supra*; Judge Waterman's dissent in *Tsakonites, supra*, *Firipis, supra*, and several other cases from the Second Circuit.

We have serious doubts whether a balancing of contacts theory should ever be used to determine whether the Jones Act should be applied when the vessel sails under a bona fide foreign flag. In *McCulloch v. Sociedad Nacional*, 372 U. S. 10 (1962), the Court held that the National Labor Relations Board could not use a balancing of contacts test to extend the coverage of the National Labor Relations Act to the crews of vessels beneficially owned by a corporation organized and doing business in the United States, where each of the vessels makes regular sailings between the United States, Latin America, and other ports, is legally owned by a foreign subsidiary of the American corporation, flies the flag of a foreign nation, carries a foreign crew, and has other contacts with the nation of its flag. In footnote 9, the Supreme Court specifically reserves the Jones Act question, but hints that it would tend to follow the doctrine of the law of the flag.

In reaching its conclusion, the Court states that for them "to sanction the exercise of local sovereignty under such conditions in this delicate field of international relations, there must be present the affirmative intention of the Congress clearly expressed."

Even if it is proper to balance contacts as an additional factor to be weighed in determining whether to apply United States law, we think this case offers no exception to the general rule of *Lauritzen*. There the Court, at 581-582, dealt with a similar situation [25] stating:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.

"International or maritime law in such matters as this does not seek uniformity, and does not purport to restrict any nation from making and altering its laws to govern its [26] own shipping and territory. However, it aims at stability and order through usages

which considerations of comity, reciprocity and long-range interest have developed to define the domain which each nation will claim as its own. Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved. The criteria, in general, appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority. It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

[27] Furthermore, unlike *Tsakonites, supra*, and *Rhoditis, supra*, the accidents here did not occur in United States ports and the origin of the illness must remain uncertain.

We, like the *Lauritzen* court at 593, "do not question the power of Congress to condition access to our ports by foreign-owned vessels upon submission to any liabilities it may consider good American policy to exact. But we can find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters." It is up to Congress, not this Court, to decide whether it is in the best interests of the United States for the Jones Act to apply to situations such as here presented so that ship-

ping lines owned by permanent aliens should be subject to the same liability as for United States lines. **Tsakonites v. Transpacific Carrier Corp.**, 368 F. (2d) 426 (2 Cir., 1966).

C. If American law is to be applied, as contended by libelants, to foreign flag vessels merely because they have substantial contact with the United States, havoc would be created in international maritime affairs. Since the United States is obviously the largest commercial center in the world, it follows that many, if not all, foreign flag ships trade substantially in United States ports. We are not prepared to cause or create any more friction than which now exists in foreign trade matters. We think that the flag of convenience rule has been extended sufficiently far and should not attempt, merely because of substantial contacts, to reach [28] a bona fide flag vessel.

Since the issues presented herein involve a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order to be entered may materially advance the ultimate termination of the litigation in these five cases (as well as other cases pending in this Court), the order to be presented will comply with the requirements of 28 U. S. C., Section 1292 and the applicable rule of the United States Court of Appeals for the Fourth Circuit. While the Court holds that Greek law will apply to each of these five cases, it should be noted that alleged American wage violations will be reserved for later determination.

Walter E. Hoffman

/s/ Walter E. Hoffman

United States District Judge

At Norfolk, Virginia, February 24, 1970.

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JOHN F. DAVIS, C

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

VS.

ZACHARIAS RHODITIS,
Respondent.

PETITIONERS' REPLY BRIEF

GEORGE F. WOOD
510 Van Antwerp Building
P. O. Box 2245
Mobile, Alabama 36601
Attorney for Petitioners

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PETITIONERS' REPLY BRIEF

Although this is a brief in reply to respondent's brief, an effort to respond to each of the assertions of that brief would extend this reply far beyond reasonable limits. Suffice it to say that the respondent's brief does include numerous innuendoes, illogical conclusions and inappropriate citations. Many of these are apparent upon casual reading; some will be touched on in oral argument.

There is, however, one recurrent theme in respondent's brief: an assertion that the Greek flag is one of convenience, readily and cheaply available, which imposed little or no obligation on a shipowner which, it is felt, calls for emphatic response.

Respondent attempts to make of the Greek flag a convenient hiding place for world shipowners who, it is inferred, have no real concern with that nation, and of whom little is required. Nothing could be further from the truth. Petitioner here, as a shipowner and operator, has undertaken for more than 35 years the burdens of a bona fide Greek shipowner with all the obligations imposed thereby. Those obligations are considerable. By virtue of its Greek flag status, Petitioners have employed Greek crews, made regular calls at Greek ports, had vessel repairs made and supplies furnished in Greece and maintained the home office in that nation.

During the year 1969 Hellenic Lines Limited paid in taxes to the Greek government, the sum of \$5,172,000.00. In the same year crew members employed by Petitioners remitted to their families in Greece more than \$1,500,000.00.

Petitioners paid \$5,200,000.00, in Greece, for repairs to and supplies for their vessels within that year.

In its operations, Petitioners are obligated to comply with the body of Greek law governing shipping, some of which has been referred to in Petitioners' brief.

The Greek government requires Greek flag vessels to be inspected by Greek officials, which are similar to our Coast Guard, or by a recognized transportation society.

Under Greek law, Greek flag vessels must be owned at least 50% by Greek citizens.

Greek flag vessels must be manned by Greek crew members unless Greek seamen are not available and only

then may they have as many as one-quarter of the crew alien.

Greek vessels must submit the smooth deck log for inspection by Greek consuls at each port of call.

Greek vessels must report all accidents to the Greek consul or the Coast Guard, depending on whether in a Greek port or a foreign port.

In the event of a casualty to the vessel, the Master must furnish the Greek consul with a seaworthy certificate from the classification society before the vessel can leave.

The Greek shipowners must contribute to N. A. T., a fund for all seamen, both Greek and alien. This is a pension fund similar to our social security.

Under Article 13 of Greek Law 2687/1953, if a vessel be built with foreign capital obtained under this law, any foreign corporation which is owned at least 50% by Greek citizens must submit to a thorough investigation and have an agent in Greece who is a permanent resident of Greece. He must make a sworn statement as to Greek interests and he is responsible to the Greek government for any violation of Greek law. In order to avoid the characterization of the Greek flag as a flag of convenience . . . the Ministry of Merchant Marine has, by permanent circular, set out the full documentation required to prove Greek interest.

These are but some of the obligations imposed on Greek flag owners. They serve to illustrate that Petitioners' contacts with Greece are neither casual nor evasive. They are sufficient to demonstrate that, truly, the Greek flag is no flag of convenience. It is a bona fide flag for the benefit of Greek nationals whereunder the shipowner undertakes substantial burdens and obligations. Petitioners here, having assumed the obligations of a Greek

shipowner since 1934 and having carried out these responsibilities, do not wish to assume the additional burdens of the American shipowner as well. Indeed, they should not be required to do so.

Respondent's efforts to disparage the flag of Greece and to make of it an escape hatch from responsibility is not only inappropriate but inaccurate.

Respectfully submitted

GEORGE F. WOOD
510 Van Antwerp Building
P. O. Box 2245
Mobile, Alabama 36601
Attorney for Petitioners

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UNIVERSAL CARGO CARRIERS, INC.,

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v.

ZACHARIAS RHODITIS,

Respondent.

AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS

JOHN R. SHENEMAN

*Attorney for Amici Curiae
Greek Chamber of Shipping*

and

*The Union of Greek Shipowners
19 Rector Street
New York, New York 10006*

EDWIN K. REID

GEORGE D. BYRNES

Of Counsel

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AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS

Statement of Interest of *Amici Curiae*

This brief as *amici curiae* is respectfully submitted in support of Petitioners by The Union of Greek Shipowners and the Chamber of Shipping of Greece.

Petitioners and Respondent have consented to the filing of this brief. The letters of consent are on file with the Clerk of this Court.

The "S/S Hellenic Hero," a Greek flag vessel registered under Greek law, was operated and controlled by Petitioners. Hellenic Lines Limited, a 35 year old Greek Corporation all of whose stockholders are Greek citizens. Respondent, also a Greek citizen, was a resident and domiciliary of Greece and was employed and boarded said vessel at Greece under a Greek Collective Agreement which dictated submission of shipboard disputes to exclusive Greek Court jurisdiction and exclusive Greek law and contemplated payment to seamen, in the event of injury, of benefits under the Greek law in accordance with Greek social welfare programs.

The Union of Greek Shipowners, incorporated under Greek law in 1923 with a head office at Athens, is open to membership of Greek owners of vessels of over 4,500 deadweight tons. It has a membership of 175, owning over 6,000,000 gross tons registered under the Greek flag. It is the most representative of Greek owners. The Panhellenic Seamen's Federation, is a Greek corporation consisting of the various Maritime Trade Unions, i.e. the Unions of Masters; Radio Officers; Engineers of Internal Combustion Engines; Sailors, Firemen; Stewards and Ship's Cooks. It is the most representative of Greek seamen. Every Collective Agreement, including the one in the present case, is one bargained for and concluded by The Union of Greek Shipowners and the Panhellenic Seamen's Federation. Every Collective Agreement, including the one in the instant case, is approved by the Greek Minister of Mercantile Marine and has the effect of Greek law, binding on owners, masters, officers and crew of all Greek vessels of over 4,500 deadweight tons, even though the shipowner or

the master, officers and seamen be not members of The Union of Shipowners or the Panhellenic Seamen's Federation. Thus, The Union of Greek Shipowners and the Panhellenic Seamen's Federation work together to conserve and maintain the primacy of Greek Court jurisdiction and Greek law aboard Greek owned Greek flag vessels. In addition, The Union of Greek Shipowners' interest extends to attendance at International Conferences on questions of safety of human life at sea and the rendition of opinions to the Greek Government on such matters.

The Chamber of Shipping of Greece, a Greek corporation established some 40 years ago with a principal office at Athens, is a judicial person in the area of public law. Its members include all the owners of Greek flag ships, irrespective of size, kind or tonnage, totalling 3001 owners and about 10,364,687 gross tons. It is principally a consultive organization. It advises the Greek Ministry of Mercantile Marine and private industry on shipping including all questions of seamen employment and labor aboard Greek flag ships. It prepares all kinds of legal and administrative measures affecting ships and shipping, conducts arbitrations of maritime disputes, is represented at International Conferences on shipping, such as safety of human life at sea, load-lines, ship design and equipment, bills of lading, oil pollution, nuclear cargo and insurance, freight rates, conference practices, port development, trade and development, legislation; and publishes a Bulletin quarterly in which shipping questions are discussed. Like The Greek Union of Shipowners, it has a vital interest that Greek law and the jurisdiction of the Greek Courts, preserved in the Collective Agreements,

should exclusively govern personal injury disputes and all other disputes affecting the internal economy and discipline of Greek owned Greek flag vessels.

ARGUMENT

Respondent's maritime injury aboard a Greek flag vessel and the resultant dispute herein, admit of contacts with both the United States and Greece, and bring into play their competing laws. These competing contacts arise out of the parties' and vessel's engagement in international commerce.

This Honorable Court in *Lauritzen v. Larsen* (1953) 345 U.S. 571, 581, admonished that by long established usage, statutes dealing with maritime matters, including the Jones Act "have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law". International commerce, this Honorable Court in *Lauritzen* has told us, requires that there be mutual forbearance and that thus, if conflict is to be avoided in applying maritime law, the courts must ascertain and value the points of contact between the injury or transaction and the states or governments whose competing laws are involved. The *Lauritzen* Court said at page 582:

"Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the estates or governments whose competing laws are involved. The criteria, in general, appear to be arrived at from weighing of the significance of one or more connecting factors between

the shipping transaction regulated and the national interest served by the assertion of authority. * * * But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

As was said by this Court in *Romero v. International Terminal Operating Co.* (1959) 358 U.S. 354, 382-383:

"We are not dealing with the sovereign power of the United States to apply its law to situations involving one or more foreign contacts. But in the absence of a contrary congressional direction, we must apply these principles of choice of law that are consonant with the needs of a general federal maritime law and with due recognition of our self-regarding respect for the relevant interests of foreign nations in the regulation of maritime commerce as part of the legitimate concern of the international community. * * * The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues inevitably entangled in the conduct of our international relations."

The *Lauritzen* Court set down 7 points of contact which should be considered in determining whether or not American law should be applied. They are in the order given:

1. The place of the wrongful act.
2. Law of the flag.
3. Allegiance or domicile of the injured.

4. Allegiance of the defendant shipowner.
5. Place of contract.
6. Inexcessibility of the foreign forum.
7. The law of the forum.

The Lauritzen Court concluded that three of the above were of special significance, namely, (1) the law of the flag, (2) the allegiance or domicile of the injured and (3) the allegiance to the defendant shipowner. The Lauritzen Court stated (pages 585-586), however, that "cardinal importance" was to be attached to the law of the flag and that " * * * the weight given to the ensign overbears most other connecting events in determining applicable law," so much so that it " * * * must prevail unless some heavy counterweight appear" (pgs. 585-586). This pronouncement was merely a restatement of the settled American principle that the law of the flag controls matters relating to the internal economy and discipline of a vessel. Indeed, since Lauritzen, this Honorable Court has re-emphasized the paramount importance of the law of the flag. *McCulloch v. Sociedade Nacional d. Marineros de Brazil* (1963) 372 U.S. 10 (National Labor Relations Act does not apply to maritime operations of ships owned by foreign subsidiaries of American corporations, crewed by alien seamen.)

Thus, this Honorable Court has made it clear that the ultimate issue in judging the applicability of the Jones Act is whether the existing factors establishing a connection with the United States are sufficient to outweigh "the most venerable and universal rule of the flag."

The Fifth Circuit well recognized this standard, but found a "heavy counterweight" to the flag, namely, that the "Hellenic Hero" "was for all commercial purposes owned and operated by a United States domiciliary", or more precisely, that "Hellenic Lines Ltd.," the operator of said vessel and the employer of Respondent, had a base of operation in the U.S. and its majority stockholder, although an alien, was a resident of the United States.

Commercial presence, founded upon a base of operations and stockholder residence in the United States, was not one of the points of contact which this Honorable Court set forth in *Lauritzen*. This Court voiced no concern over competitive economic benefits arising out of the selection of competing systems of law. Such concept was greatly stressed by the injured seamen in *Lauritzen*. As to this, the *Lauritzen* Court said:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea."

The Fifth Circuit went further in its theory of commercial presence. It held that commercial presence, per se, allowed it to pierce through the Greek corporate structure of the owning company, "Hellenic Lines Ltd.," to the residency of the alien majority stockholder so as to reach

the conclusion that the "Hellenic Hero's" flag was one of convenience or sham. The authority upon which the Fifth Circuit performed this piercing exercise counteracts the basis of the Court's decision. The misplaced authorities are those cases which hold that ownership of a foreign flag vessel by an American citizen (corporate or individual) in and of itself, is sufficient to make the foreign flag illusory, and this is so despite the foreign formalities and devices, including foreign residence etc. which the American places between himself and the flag. These cases pronounce no more than the well established principle of international law, which allows a state to govern the conduct of its own citizens on the high seas, in foreign countries, etc. Such principle was discussed by this Honorable Court in *Lauritzen*, wherein it stated at page 587:

"A state is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries or where the rights of other nations or the nationals are not infringed. (Citations omitted.) Until recent times this factor was not a frequent occasion of conflict for the nationality of ship was that of its owners. But it is common knowledge that in recent years the practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration, eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of a more or less nominal registration to enforce against American shipowners the obligations which our law places upon them."

It is worthy to note that nowhere in its opinion did the Fifth Circuit mention the numerous and substantial con-

tacts with Greece of the Greek plaintiff, his Greek contract Hellenic Lines, Ltd., the Greek owning company and the Greek flag vessel, itself. It is submitted that these contacts were more than sufficient to show that the Greek character of the "Hellenic Hero's" flag and of the owning company were more than mere formalities. In any event, this Honorable Court in *Lauritzen*, by implication, announced that citizenship of the defendant shipowner is to be considered without heed paid to concepts of residency or economic advantage or disadvantage. While one of the contacts, which this Court stressed, was the "Allegiance or Domicile of the Injured" seamen, in talking of the defendant shipowner, it merely used the term "Allegiance". It must be assumed that this Court gave thoughtful reflection to use of the phrase "Allegiance of the Defendant Shipowner" and used it against the background of international maritime law, which, it is submitted, does not admit that allegiance should be based on the transitory concept of residency, or base of operations or that it should be defined in terms of economic ties with the United States. It is noteworthy that the Second Circuit in *Tjonaman v. A/S Glittre et al.*, 340 F. 2d 290 (2 CA-1965) cert. den. 381 U.S. 925 (1965) reh. den. 382 U.S. 873 (1965) inserted the word "national" before the phrase "Allegiance of the Defendant Shipowner".

The idea of doing business in or with the United States is essentially one of fragmented location of that part of foreign commerce between nations. The business is largely where the cargoes are. The United States because of its prodigious wealth has, at this time of history, an advantageous trade position in international commerce. To ex-

halt the commercial presence of alien corporations and ships in the United States over foreign flag and corporate structure, it is submitted, is nothing more than a nationalistic or chauvinistic exercise which stands as an affront to international comity, the sensibility of foreign sovereigns and as this Honorable Court stated "would blight international carriage by sea".

The international complications of this approach if sanctioned by this Honorable Court can not be underestimated. The great merchant fleets, passenger and cargo vessels, of sovereign powers trade continuously, systematically and substantially with all the major and minor ports of the United States. Concomitant with this trading, they maintain extensive offices, carry on extensive solicitations, business and financial operations in the United States, indeed far greater than the Petitioners here. Should we say to the Cunard Line, French Line, Italian Line, Holland-American Line and others, "your commercial presence in the United States, in and of itself, overrides your flag and you are subject to our laws without reference to your own laws"? It is submitted that these questions answer themselves.

The Fifth Circuit's decision in the instant case is in direct and utter conflict with the decision of the Second Circuit in *Tsakonites v. Transpacific Carrier Corporation*, 368 F. 2d 426, 2 Cir. 1966, cert. denied 386 U. S. 1007.

In *Tsakonites*, the Trial Court and the Court of Appeals, a learned and respected Admiralty Court, reviewed and carefully considered the United States residence of the majority stockholder and the United States base of busi-

ness operations of the Greek vessel and held that these were not sufficient to outweigh the Greek flag. *Tsakonites* was followed in *Nikitas Missos et al. v. Transpacific Carriers Corp. and Hellenic Lines, Ltd.* in the Southern District of New York. The memorandum opinion of Judge Frankel is annexed as Exhibit A. After the decision dismissing the suit, Christos Giakoumis, one of the plaintiffs, known as Christos S. Yocoumis, made claim and received an award by a Greek Court. Annexed as Exhibit B is a certified true translation of the decision from Greek into English.

In emphasizing the importance of internal discipline aboard a foreign flag vessel the resulting consequence in choice of law, this Court said in *Lauritzen* at pages 585-586:

"And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. * * *"

This was but a repetition of settled American doctrine."

It is submitted that in the circumstances of this case, it is in the interest of Greek commerce and Greek law that accidents to Greek seamen aboard Greek flag vessels owned by Greek corporations be dealt with by Greek law and Greek Courts. The presence of Hellenic Lines, Ltd. and

its majority stockholder in the United States and the ship's visits to American ports are consonant with comity and American law and have not involved the peace or dignity of the United States or the tranquility of her ports.

CONCLUSION

The Greek Chamber of Shipping and the Union of Greek Shipowners, as *amici curiae*, respectfully ask this Court to reverse the opinion below denying the applicability of the law of the flag.

Respectfully submitted,

JOHN R. SHENEMAN
ZOCK, PETRIE, SHENEMAN & REID
Attorneys for Amici Curiae
19 Rector Street
New York, New York 10006


EDWIN K. REID
GEORGE D. BYRNES
Of Counsel

Certificate of Service

This is to certify that on the 26th day of February, 1970 copies of the above Brief thereof have been forwarded to:

George F. Wood of Pillans, Reams, Tappan, Wood & Roberts, Attorney for Petitioners, Hellenic Lines, Limited and Universal Cargo Carriers, Inc., whose consent to file this brief has been obtained, at his office and post office address, 510 Van Antwerp Building, P.O. Box 2245, Mobile, Alabama 36601.

Joseph B. Stahl, Attorney for Respondent, Zacharias Rhoditis, whose consent has been obtained, at his office and post office address, Baronne Building, New Orleans, Louisiana 70112.

 **JOHN R. SHENEMAN**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHAS NISSOS, CHRISTOS GIAMOURIS, and
GEORGE DIANOS,

Plaintiffs,

-against-

TRANSNACIFIC CARRIERS CORP.,
and HELLENIC LINES, LTD.,

Defendants.
----- X



MEMORANDUM

67 Civ. 704

FRANKEL, D.J.

This case is in all material respects identical with Tashnites v. Transnacific Carriers Corp., 346 F. Supp. 436 (S.D.N.Y. 1965), aff'd, 368 F.2d 436 (2d Cir. 1966), which involved the same defendants. When defendants filed the present motion for summary judgment, plaintiffs' main contention was that Tashnites was not yet a firm precedent because it was pending on petition for a writ of certiorari. The petition has since been denied (Oct. T. No. 1125, April 17, 1967), and the parties have stipulated the facts leaving no doubt as to the controlling force of Tashnites.

Accordingly, the motion for summary judgment will be

granted dismissing the complaint.

Settle order.

Dated: New York, New York
May 10, 1967

Nawin E. Fraubel
U.S.D.J.

Number 423

MEMORANDUM OF COMPOSITION No 551

In Piraeus, on this Wednesday, the 28th day of the month of February, in the year 1968, nineteen sixty eight, at one o'clock p.m. before me, , Al. Pilinos, Justice of the Peace in and for Piraeus and in the presence of the Clerk, Ariadni Manthou, -

APPEARED:

on the first part, HARIKLIA, wife of Const. Andreopoulos, advocate, resident of Piraeus, Akti Nissoulis 3, Card of identity 4.125.867/66 of the Law Society of Athens, acting in the present instance as Attorney-at-law, by order, for account and with assets of the limited liability Company by shares, seated in Piraeus ("Hellenic Lines Ltd") under style "I ELLINIKI", legally represented, manager of the cargo vessel "HELLENIC LEADER", flying the Hellenic flag, registered in the "Shipping Registers of the port of Piraeus, and of the second part, CHRISTOS Stefanou YACOUNIS, resident of the isle of Ikaria, (card of identity 4.125.867/66)

WHO set forth, declared and mutually acknowledged the following:

Christos Yacounis declared that upon agreement with the Representatives of the aforesaid Company, drawn up in Piraeus, he let on lease his services as sailor aboard the cargo vessel, managed by the said Company, "HELLENIC LEADER", with salary and upon other conditions, as provided by the Collective Contracts. That in execution of that agreement, he went to

ROYAUME DE GRECE
AFFAIRES ETRANGERES
DEPARTEMENT DE TRANSCRIPTION

9.393

- 2 -

Hercules, Costa, and was enrolled there on June 26, 1966 and on the same day embarked on board the said vessel where he offered his services up to December 29 1966, when he was dismissed in accordance with the law, owing to an accident of which he fell victim in his work. -

Consequently, as a result of his fall from a very high point of the boat where he was with other members of the crew, he suffered a fracture of the frontal bone with comminution, fracture of the right articulation of the hip with the wrist plus fracture of the right knee.

He was hospitalized in the Hospital in New York for 31 days, then he was sent back to Greece at the private expense of his family, where he received the necessary treatment for a long time in the Hospital of the Ministry of Health and then at home as an out-patient) up to February 26, 1968, when all treatments ceased.

That owing to the said accident he suffered total inability to work, permanent and incurable and, given that his regular monthly salary, during the 12 months immediately preceding the accident, amounted to dracmas 6.632 or their equivalent in pounds 11-1745, i.e. a) salary £ 70.12.5 and b) board £ 11.240, while, on the other part, his accident, under the aforesaid circumstances, constitutes, according to the provisions of the modified law no 551, an accident in the exercise of his service due to such service, and is therefore entitled to an indemnity, amounting to the following sum. i.e. : According to the provision of the paragraph 2 of the art. 3 of the Royal

mg

Decree of the Royal Decree "Re: Amendment of the Act n° 551", as amended by the art. 1 para. 2 of the Act n° 4705/1930, in conjunction with the common decision n° 38904/1957 of the Ministers of Public Works, merchant Marine and Labour, which provide that the indemnity due once for all in the event of partial permanent impotence, due to a labour accident, consists of the sextuple of the sum by which the yearly revenue of the victim was diminished or may be diminished yearly the revenue from salary of the victim, and in the case of a diminution exceeding 30.000 drachmas thirty thousand, the one fourth of such excess is added.

So, on the basis of regular monthly salary of 6.832 drachmas the indemnity due amounts to drachmas 145.251. further the same is entitled to have sickness salaries for 75 days out of any clinic, at the rate of 24-4-0 per month and further salaries of 45 days in clinic £ 31.4-0 per month, i.e. he is entitled to receive in all for the said reason £ 107.10-0 of drachmas 8.976, at the official rate of the British pound, i.e. he is entitled to receive in all, drachmas 154.227 one hundred and fifty four thousand two hundred and twenty seven, on account of which sum he recognizes and acknowledges that he has already received from the "Hellenic Lines, Ltd" 1 "ELLINIKI," against receipts drachmas 29.000 twenty nine thousand and sixty so that it remains a remainder to be received from the managing the aforesaid ship Company "THE HELLENIC LINES, Ltd 1 ELLINIKI" of Drs. 125.167, which the said Company is obliged to pay to him: -

The attorney-at-law of the said Company, HARRICLIA ANASTASIOPOULOU declares that although she denies and rejects the assertions of Christos Iacovou and also his claims in general as deprived of any support by law and in the matter, so much as the latter has not suffered the accident invoked in the case, she also that his salary does not amount to the sum claimed by him, nor that he became totally impotent to work and in order to prevent judicial contests, expenses and litigation, she accepts to proceed to the final arrangement by payment of the whole sum of indemnity and compensation of any claim of the adverse party and offers to pay the sum of Drac 25,000 -- already paid -- and the sum of Drac 125,167 --

Whereafter, both Apparours requested that we approve and sanction the arrangement. -

We, Justice of the Peace, seeing that said arrangement is not contrary to the art. 15 of the Act 5514/1920 as the same has been signed and is in force to-day, as the whole legal indemnity is paid, have approved and permitted present arrangement. Whereupon Har. Kolia-Andreopoulou, in her aforesaid capacity, paid to Christos Iacovou, in our presence, the sum of Drac 125,167 one hundred and twentyfive thousand one hundred and sixty seven drachmas, which sum was received, as aforesaid, by Christos Iacovou, who declared that he considers, acknowledges and recognises himself fully indemnified and satisfied for the aforementioned causes and gives full acquittance of

of any his claim and pretention against the Manager of the said vessel, "the Hellenic Lines, Ltd" its representatives, owners, operators, crew, insurers and Agents of the ship "Hellenic Leader" deriving from his having been wounded on board of the said ship and generally from his whole service on board of the same, either on the basis of the modified law No 531, as it is in force to-day, or on the basis of ~~Act~~ Act No 3316/1958 "Re: Maritime Private Law" and more especially from its articles 6 and following or of the Civil Code of Law and of any other provision of any Hellenic Law, for any his claim, in principal, interests and expenses, including judicial ones deriving from the said cause of his service on board of the said vessel, generally, and by reason of moral damage, not having hereinafter any claim or pretension from the same or from any other cause, deriving from the premises, and he does hereby renounce, expressly and without any reserve, all rights and demands deriving from any entered or to be entered other suit and claims, before any courts of Justice of every degree and jurisdiction, in this or in another country, such as any writs of process and rights versus persons, especially by reason of moral prejudice, acknowledging and recognizing that all aforesaid persons have no other responsibility or obligation by reason of his accident, due to his own fault and responsibility, and not to any mechanical defect or deficiency of the ship nor appurtenances, nor to any dole, neglect or act of omission of the officers and of the crew, or the men charged to charge or discharge the vessel, her owners, managers, insurers and Agents and, generally any person or persons appointed by the owners

nor to any transgressions of Act and Rules by the the persons appointed for the surety of the crew, but .to the contrary, to his own negligence and willing transgression of the laws and regulations, and renounces expressly and without any reservation of any right to attack ^{as} ~~thereof~~ ^{present} for any reason formal or essential.

And Hariclia Kolia-Andreopoulou, in her capacity, in which she appears and acts, declared that she accepts in the name and for account of the "HELLENIC LINES, Ltd.", the Managers of the vessel "the Hellenic Leader" and of the shipowners, managers, agents and insurers of the said vessel all above-mentioned declarations, propositions, avowals, acknowledgements and renouncements of Christos Yacounis:-

finally, all contracting parties declared that they offset the judicial costs of these presents.-

IN WITNESS WHEREOF present memorandum was drawn up which having been aloud and distinctly in the hearing of all parties herein and confirmed are signed in due form of law by all and me, the Justice of the Peace, after payment of the stamp tax for which the receipt in triplicate N° 11594 of the receiver of incomes, Const. Syrianis of the Stamps Office of Piraeus, dated February 23, 1961, of Drs. 1852 one thousand eight hundred and fifty two, has been issued.-

The Appearers:

H. C. Andreopoulou

Chr. Yacounis.

The Clerk:

A. Manthou

The Justice of the Peace:

Al. Pilinis

Handwritten signature

A TRUE COPY

In Piraeus , March 28, 1968. The Clerk: Th. Billias. L.S.

This is to certify the genuineness of the signature of the Clerk who issued the copy , Theodore Billias, Judicial Sub-Clerk of the first class in our Service and also of the Clerk of first class who viced it.

In Piraeus, April 2, 1968 The Head of the Offices of the Justice of the Peace, in and for Piraeus,

In Piraeus, April 2, 1968

The Head of the Justice of the Peace Offices of Piraeus: L.S.) Illegible signature (pan.Papadimitropoulos, Judge of the first instance.

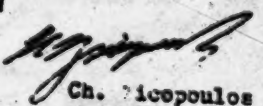
This is to certify the genuineness of the signature of the Judge of the first instance of Piraeus, Panay. Papadimitropoulos. Athens, April 2, 1968 The President of the Court of the first instance of Piraeus: (L.S.) E. Dialyan

This is to certify the genuineness of the signature of Mr E. Dialana, President of the Court of the first instance of Piraeus. In Athens, April 2, 1968. By authority of the Minister of Justice: The Chief of Bureau: (L.S.) (sg) N.Kryos,

SEEN for its correct stamping and timely delivery. In Piraeus, even date. The Chief of Bureau: (L.S. Illegible signature.

A TRUE TRANSLATION

Athens, April 5, 1968. The Translator:


Ch. Nicopoulos.

ROYAUME DE GRÈCE
MINISTÈRE DES AFFAIRES ÉTRANGÈRES

Vu pour la légalisation de la signature
de Mr. STEFANOS V. VASSILOPOULOS

Traducteur au Ministère des Affaires Étrangères

ATHÈNES LE 8 AVR 1968

N° 2 AUTORISATION DU MINISTRE

LE DIRECTEUR



[Handwritten signature]

APR 10 1968



MINISTRY OF GREECE
PROVINCE OF ATTICA
CITY OF ATHENS
EMBASSY OF THE
UNITED STATES OF AMERICA

SS.

I, **Richard J. Higgins,** Vice Consul
of the United States of America at Athens, Greece, duly commis-
sioned and qualified, do hereby certify that, to the best of my knowledge and
the signature subscribed to the foregoing documents, i. e.

True copy of minutes of a session held by the Office
of the Justice of the Peace in and for Piraeus, Greece,
on February 20, 1968, duly certified by the lawful
custodian of such documents, in the matter of, "I KILIMETRI"
(Hellenic Lines, Ltd.), and Christos S. Theomias, coming
with official translation thereof in English -

Signature of **P.L. NAFIOMICHALIS,** Chief of Bureau
Ministry of Foreign Affairs of Greece, and that by virtue of said
signature empowered to certify, under the seal of the Ministry of Foreign
Affairs of Greece, to the authenticity of the signatures and to the compo-
sition of the Greek Government; and that the seal accompanying
the signature is the seal of the Ministry of Foreign Affairs of Greece.
The Embassy assumes no responsibility for the contents of the attached

Witness my hand and the seal
of the Consular Section of the Embassy of
the United States of America at Athens,
Greece, this 24th day of April
in the year 1968

Richard J. Higgins
Richard J. Higgins,
Vice Consul of the United States
of America

Supreme Court of the United States

October Term, 1969

No. 661

**HELLENIC LINES LIMITED and UNIVERSAL CARGO
CARRIERS, INC.,**

Petitioners,

against

ZACHARIAS RHODITIS,

Respondent.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

**BRIEF OF THE ROYAL GREEK GOVERNMENT
AS AMICUS CURIAE**

JAMES M. ESTABROOK

*Counsel for the Royal Greek Govern-
ment-as Amicus Curiae*

80 Broad Street

New York, New York 10004

DAVID P. H. WATSON

of Counsel

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Supreme Court of the United States

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ZACHARIAS RHODITIS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE ROYAL GREEK GOVERNMENT AS AMICUS CURIAE

The Royal Greek Government having obtained and filed the written consents of counsel for Petitioners and counsel for Respondent, respectfully submits this brief as amicus curiae.

Jurisdiction

The final judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 3, 1969, on which date the Court denied Petitioner's petition for rehearing and petition for rehearing en banc. The petition for certiorari was filed September 27, 1969, and was granted January 12, 1970. (The jurisdiction of this Court is confirmed by Title 28 United States Code, Section 1254.)

Statement of the Facts

Respondent, a first class seaman, was employed in Greece upon the Greek steamship Hellenic Hero on a voyage to United States ports and return. He was injured while the ship was docking in the port of New Orleans; however; no negligence except that of the owner and the operators of the vessel is claimed in this proceeding. Hellenic Lines Limited, a Greek corporation, was the operator of the Hellenic Hero at all pertinent times and was the employer of petitioner. Title to the Hellenic Hero was, however, in Universal Cargo Carriers, Inc., a Panamanian subsidiary of Hellenic Lines Limited. The Hellenic Hero flew the Greek flag and her home port was Piraeus, Greece. After he was injured and after he had received medical care in New Orleans, respondent was repatriated to Greece where he returned to work after being fully cured. Subsequently, respondent proceeded to bring this civil action to recover under the Jones Act and *in rem* and *in personam* to recover benefits under the General Maritime Law.

Hellenic Lines has already paid medical expenses and a portion of other benefits to respondent Rhoditis under Greek law.

Interest of the Greek Government

The interest of the Greek Government, as stated in its brief amicus on the petition for writ of certiorari in this case, is very obvious. The m/s Hellenic Hero was a vessel flying the Greek flag, registered in Greece in accordance with the Greek law and operated by Hellenic Lines Ltd., one of the petitioners, a Greek corporation, all of whose officers and directors are Greek citizens. The injured seaman respondent was both a citizen of Greece and a resident of Greece. Respondent signed his articles and contract of employment in Greece which contract called for appli-

cation of the Greek Collective Bargaining Agreement and Greek law.

Of particular concern to the Greek Government is the decision of the United States Court of Appeals for the Fifth Circuit stating that "the Hero's flag is more symbolic than real" and that "the Hero's flag is merely one of convenience".

These findings which led to the Court of Appeals' conclusion that the Jones Act (46 U.S. Code § 688 et seq.) and the General Maritime Law of the United States should be applied, are in direct contradiction with the decision of the United States Court of Appeals for the Second Circuit in a virtually identical case, *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007.

Thus the Court of Appeals for the Fifth Circuit ignored the interest of the Royal Greek Government as the authority granting Greek registration to the m/s Hellenic Hero; as the authority authorizing m/s Hellenic Hero to fly the Greek flag; as the authority granting incorporation under the Greek law to Hellenic Lines Limited as far back as 1934; as the Government of the nation of which respondent was both a citizen and a domiciliary; as the Government which approved the terms of the Collective Bargaining Agreement in force; as the Government of the laws referred to by the terms of the hiring articles and the Greek Collective Bargaining Agreement and finally as the Government having jurisdiction over respondent's claim against petitioner on the basis of liability without fault under Greek law. Furthermore, the Fifth Circuit decision is in direct conflict with *J. Lauritzen v. Larsen*, 345 U.S. 571 (1953) where at page 584 it was stated:

"Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it.

Nationality is evidence to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state".

ARGUMENT

This Court in *J. Lauritzen v. Larsen, supra*, set forth the factors to be considered in determining whether the law of the flag was applicable in cases of injury to merchant seamen occurring in United States waters.

The decision of the United States Court of Appeals for the Fifth Circuit has not followed these guidelines in arriving at its conclusion that the Jones Act should be applied.

Rather, the decision of the United States Court of Appeals for the Fifth Circuit overemphasizes the fact that the injury had occurred aboard the vessel while in United States waters. Circuit Judge Goldberg states that "The American character of this tort is further emphasized" by that fact. However, no Americans were involved. The accident occurred on the Greek ship. Judge Goldberg states that this "weakens our bondage to the flag" and that "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability".

Nonetheless, this Court had earlier in *J. Lauritzen v. Larsen, supra*, eliminated the particular location of the vessel as having any influence on the choice of applicable law. In the *Larsen* case the injury occurred aboard ship while in the port of Havana. At 345 U.S. 583 it was stated:

"The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate".

Later, at page 584 of 345 U.S. this Court added:

"But the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag".

Later this Court emphasized the minimal weight to be ascribed to this factor in *Romero v. International Terminal Operating Co., et al.*, 358 U.S. 354 (1959). *Romero* was a Spanish citizen, was signed on in Spain on a vessel with a Spanish flag owned by a Spanish corporation. In the *Romero* case the injury occurred aboard the vessel while already docked in the port of New York. In the *Rhoditis* case herein the accident occurred prior to the vessel being secured alongside. Mr. Justice Frankfurter commented upon the weight to be ascribed to the situs of the tort at 358 U.S. 384:

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country".

Thus this Court has clearly held twice that the law of the place where the vessel happens to be at the time of shipboard injury should not be given weight. The decision of the United States Court of Appeals for the Fifth Circuit as to which petitioners seek a review has ascribed considerable weight to this factor. In fact, a reading of the opinion indicates the decision might have gone the other way had not the injury occurred while the vessel was in the port of New Orleans. The inequity of such an approach to this choice of law question is obvious. The decisions of this Court tell us clearly the choice of law to be applied to a shipboard injury should not depend on the location of the vessel.

Again, we must point out the Fifth Circuit has differed from the decisions of this Court in eliminating the significance of the third factor considered by Mr. Justice Jackson in *Lauritzen v. Larsen*. Here the Fifth Circuit stated "We find the domicile of the injured seaman to be unimportant". However, herein Zacharias Rhoditis was a Greek citizen; he lived in Greece; he signed his hiring agreement in Greece; the agreement called for the application of Greek law; the agreement called for the application of a Greek Collective Bargaining Agreement; and the agreement called for service aboard a Greek vessel. All this shows that Rhoditis was no stranger to the service in which he was engaged. There was no presumption that he was ignorant of any of the factors of his employment; in fact, the presumption is the other way. He knew the terms of his employment; he knew the Greek law; he was entitled to the benefits of the Greek law, and in fact the Greek law does provide for benefits without the necessity for his proving fault on the part of the petitioner.

Compared with this let us view the decision of the United States Court of Appeals for the Second Circuit and its emphasis on the injured seaman's citizenship and domicile in *Tsakonites v. Transpacific Carriers Corp.*, 368 F.2d 426 (2 C.A. 1967), cert. den. 386 U.S. 1007. In this case the United States Court of Appeals for the Second Circuit reached the opposite result to the Fifth Circuit herein. Circuit Judge Moore writing for the majority, stated:

"Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choice. Nor can, in this case, the Greek flag of the Hellenic Spirit be said to be a 'flag of convenience', within the meaning of cases like *Bartholomew v. Universe Tankships, Inc.*, 263 F.2d 437, 440 (2d Cir.), cert. denied, 359 U.S. 1000 (1959), and *Southern Cross SS Co. v. Firipis*, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869 (1961)."

In fact, since our brief amicus on the petition was submitted we have received a copy of the Greek Court decision granting Tsakonites recovery for his injury and explaining the applicable Greek statute of limitation as 20 years. A translation of the minutes and settlement approval by the Court is annexed hereto and marked Exhibit "A". Thus the Greek citizenship and domicile of Rhoditis should certainly be an important factor emphasizing the non-American character of the tort. Combined with the other non-American contacts this certainly indicated the Jones Act should not be applied especially since this Court stated in *Lauritzen v. Larsen*, *supra* (345 U.S. 587):

"His [the Danish seaman] presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another".

Again, the Fifth Circuit decision repudiates the logic of Mr. Justice Jackson as to the nationality of the plaintiff and the form of articles signed (345 U.S. 588-9):

"Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag-state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied."

Still another difference from the decision of this Court in *Lauritzen v. Larsen*, *supra*, is that the Fifth Circuit has failed to ascribe to the flag of the vessel its proper weight. In no way does the Fifth Circuit opinion appreciate that according to this Court the law of the flag is the prime factor. It is of cardinal importance that the weight given

to the ensign overbears most other connecting events in determining applicable law (345 U.S. 585). The law of the flag should be applied "unless some heavy counterweight appears" (345 U.S. 586).

The assumption that the Greek flag and the Greek registration of the Hellenic Hero were lightly given is not borne out. Hellenic Lines Ltd. was organized as a Greek corporation in 1934. All of its stockholders and directors and officers are citizens of Greece. The vessels call regularly at Greek ports. Only Greek seamen are employed on the various vessels including Hellenic Hero. Under the Greek Collective Bargaining Agreement, Greek law is to be applied to hiring contracts. The Fifth Circuit negated the cardinal importance to be given to the flag by pointing to the domicile of the majority stockholder who, though concededly a Greek citizen, is a domiciliary of the United States. Apparently this fact alone prompted the Fifth Circuit to hold that the Greek flag was "more symbolic than real" and "merely one of convenience". However, the facts would indicate that any flag other than the Greek flag would be one of convenience and mere symbolism; the Greek flag is the only true flag and the only proper flag to fill the operation of a vessel owned by a Greek corporation, hiring in Greece pursuant to Greek law and the Greek Collective Bargaining Agreement.

This Court has never held that the validity of the flag or registration of the vessel should be vitiated through engagement of the vessel in foreign and international commerce with regular calls at United States ports. The values were specifically refuted in *Lauritzen v. Larsen* at 345 U.S. 581:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of seaborne commerce lies in its frequent and important

contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It has the force of law, not from extraterritorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations."

Any other particular holding would be to jeopardize the flags of all vessels engaged in regular foreign commerce. For instance, should we question the flags of United States vessels which sail from New York regularly for South American ports. Even the s/s United States, formerly our blue ribbon passenger ship in North Atlantic operation, sailed between the ports of New York, Southhampton, LeHavre and Bremerhaven. Obviously it made more calls at foreign ports than United States ports, yet nobody questioned the applicability of United States law.

Thus, the decision of the Fifth Circuit holding the Jones Act and the General Maritime Law of the United States to apply to an injury sustained aboard a Greek flag vessel by a Greek citizen is not in accord with the directives of this Court as set forth in *J. Lauritzen v. Larsen, supra* and *Romero v. International Terminal Operating Co., et al., supra*.

CONCLUSION

The decision of the United States Court of Appeals for the Fifth Circuit should be reversed.

Respectfully submitted,

JAMES M. ESTABROOK

Counsel for the Royal Greek Government as Amicus Curiae

80 Broad Street

New York, New York 10004

DAVID P. H. WATSON

of Counsel

Exhibit A

No. 10396

MAGISTRATES COURT OF THE PEACE**PIRAEUS****GREECE**

Decision No. 631

PROCEEDINGS OF THE MAGISTRATES COURT OF THE PEACE**COMPROMISORY AGREEMENT UNDER ACT 551**

In Piraeus this third day of the month of April in the year one thousand nine hundred and sixty-eight (April 3, 1968), Wednesday, 11.30 a.m., and at the Magistrates court of the peace before me **ALEXANDROS PILINOS**, Magistrate for the Peace, in the presence of the Clerk of the Court **Spyridon Koumbousis**, there appeared: 1) **ELIAS TSAKONITIS** son of **NICOLAOS**, seaman, registered in the marine registers of the Mercantile Shipping under reg. serial No. 13763 holder of identity pass No. 15452 of 1968, of Piraeus, Odos Kountouriotou Street 149, accompanied by his counsel **Elias Saghias**, attorney-at-law of Piraeus, holder of identity pass No. 293/68 issued by the Lawyers Association of Piraeus, and 2) **CONSTANTINOS IOANNIS ANDREOPOULOS**, barrister-at-law, resident of Piraeus, holder of license No. 32/1968 issued by the Lawyers Association of Piraeus, acting in the name and on the behalf of the Transpacific Carriers Corporation of Panama, duly represented in Greece shipowners of the merchant S/S Vessel **HELLENIC SPIRIT**.

Both the above named made each the following statement:

Exhibit A

"I ELIAS TSAKONITIS hereby depose and state that under an Agreement dated June 4, 1959 for sea service signed at Piraeus, I signed for service on the above mentioned vessel in pursuance with the terms and conditions prescribed in the Collective Agreements Procedure in force in Greece and those which were included in the Agreement of Service. In fact, in compliance with the said Agreement of Service I left Piraeus and on June 5, 1959 I was registered for serve at Iraklion, Crete on June 5, 1959. I continued to discharge my duties as member of the crew until September 26, 1959 while the vessel was anchored at the Port of New York for off-loading. Going down the stairs leading to hold No. 3 I slipped and fell over on the wooden floors of the hold hitting myself against the floor injuring my left hip. I was at once carried-off in an ambulance to the Lutheran Medical Center of New York, dismissed from service as member of the crew on account of an accident and remained under treatment on the expense of the shipowners. After the operation and the medical observation I did not regain fitness and capacity to continue work but I became permanently partially unfit for work to an extent of 60%, and therefore I am entitled by law to an indemnity in accordance with the provisions prescribed under Act No. 551/1920 applying to labour accidents and casualties.

I further depose and state that during the time I served on board the said Vessel I was in receipt of monthly salary including overtime pay and other extra allowances amounting to £49.16.0 plus food rations in commodities estimated at £11.5.0. In other words I was paid £61.1.0 per month corresponding to the salaries and emoluments drawn by members of the crew who were in the same scale of pay during the 12 months preceding the accident. On

Exhibit A

that basis, I, am therefore entitled to receive an indemnity amounting to Drachmae 77,547 (seventy seven thousand five hundred and forty-seven) the shipowning company is responsible to pay to me in their capacity of owners and directors of the vessel I was serving during the accident."

The Attorney of the Shipowners, on the other hand, deposed and states as follows:—

"I, acting as the lawful attorney of the Ship-owning Company hereby deny, dispute the veracity and oppose every point brought forward in the arguments and assertions of ELIAS TSAKONITIS on the grounds that the accident was chiefly due to his own fault and therefore the victim is entirely held responsible for his injury as a result of very serious negligence and unforgivable action that led to the accident, and moreover to his breach of the labour regulations and procedure applicable to carriers because he resorted to the Southern District Court of New York applying for indemnity. His application was finally turned down by the Court whereupon my Assignors reserve all rights under the law in connection with the considerable expenses they incurred in the form of cost of law and incidentals for the hearing entirely on the personal responsibility of the Plaintiff ELIAS TSAKONITIS. Furthermore, the partial incapacitation of the plaintiff resulting from the accident amounts only to 20% and not 60%. In any case however, the amount of the incapacity for work as seaman did not make the plaintiff permanently unfit for work. Moreover in pursuance with the provisions prescribed in article 17 of Act 551/1920 the claim submitted by the plaintiff for indemnity as a result of an accident to him which occurred on September 26, 1959 is no longer valid and is written-off."

Exhibit A

Claimant ELIAS TSAKONITIS opposed and raised objections to every point suggested by the Attorney of the Shipowning Company, more particularly as regards the point of negligence on the part of the Claimant or the nature of his incapacity asserting to be of permanent character but partial to the degree of 60% acknowledged as such by the competent Medical Board of the Marine Veterans Social Insurance Fund, which, on these grounds, granted to him a pension allowance. Finally, the Claimant took objection to the invalidation and writing-off of his claim because according to the decision of the Supreme Court of Justice AREIOS PAGOS under decree No. 066 of 1966 published in the Legal Tribune page 1006 of 1966 claim for the writing-off of a lawful claim under the provisions prescribed in Act 551/1920, may be written-off after the lapse of 20 years similar to the period set down in connection with ordinary claims applicable to accidents to workers at sea. On the other hand the attorney of the Shipowners declared that all the points he submitted to Court are grounded on the point of the law and cannot stand any objection or opposition, or could they be influenced or weakened from the assertions of ELIAS TSAKONITIS, however, to save time and to avoid further judicial proceedings, disputes and contentions and all legal entanglements, costs of law and incidentals, is prepared to accept and hereby accepts to settle forthwith the entire indemnity demanded by the Claimant ELIAS TSAKONITIS, and, hereby offers to pay to the Claimant the sum of Drachmae 77,547 (seventy-seven thousand five hundred and forty-seven) in full settlement of his claim.

Now, inasmuch as both Parties jointly requested the Court to approve and to allow the compromisory agreement and settlement of the indemnity.

Whereupon the Magistrate of the Peace issued his reasoning and decision reading as follows:

Exhibit A

"We, Magistrate of the Peace, having taken into consideration that Settlement of the Indemnity requested by the Parties concerned does not conflict with the provisions prescribed in article 14 of Act 551/1920 as now amended, have approved and allowed the compromisory agreement between the Parties concerned and its full settlement".

At this juncture CONSTANTINOS ANDREOPOULOS in his capacity of attorney of the Shipowners counted and paid in my presence to ELIAS TSAKONITIS the sum of Drachmae 77,547 (seventy-seven thousand seven hundred and forty-seven Drachmae), collected as cash money by the Claimant ELIAS TSAKONITIS in the presence of his Counsel ELIAS SAGHIAS Barrister-at-law, stating and acknowledging at the same time that his client ELIAS TSAKONITIS accepts the payment made and admits that he is entirely and completely satisfied and compensated, dismissing any other claim whatsoever of his Client from the TRANSPACIFIC CARRIERS CORPORATION owners and directors of the carrier HELLENIC SPIRIT of Panama, or from the Shipping Company "I ELLINIKI", the Shipping Agents and the Agents of the Carrier Vessel, the Master, officers, the crew of the vessel, the Insurance Agents and any other duly qualified representative or agent of the HELLENIC SPIRIT in connection with the accident he had while serving on board the said Carrier either under the provisions of Art. 551/2 of Act 3816/58 regarding procedure under the Private Mercantile Law or under any other provision of the Civil Law and Procedure and of any procedure old law provided in the Greek Law and Procedure or in any foreign Law and Procedure, particularly that of the United States of America in connection with any capital of money, interest thereon, costs, claim or demand raised by him for moral damages, compensation or other claim arising from the same cause and he, the Claimant, retains no other claim, demand or rights whatsoever on account of the same cause or reason either directly or

Exhibit A

indirectly. To the above statement made by his attorney the Claimant ELIAS TSAKONITIS stated and deposed that none of the persons named here-above severally or jointly are to be held responsible or answerable regarding the accident which is entirely due to his own carelessness and negligence and not to any mechanic defect or to the absence of any necessary spare part of the vessel or of the machine installations or to any fault, failure, neglect, action or omission on the part of the Master, the Officers, the Boatswain, the members of the crew, or the shipowners and managers of the Shipping Company including their Seniors and Superintendents. Finally the Claimant abandons all and any right or rights whatsoever and claims against any person or persons whomsoever, or legal entities or corporations for repairs and indemnity as a result of moral injury.

On the other hand, CONSTANTINOS ANDREOPOULOS in his capacity of duly commissioned attorney acting on the behalf and in the name of the TRANSPACIFIC CARRIERS CORPORATION, hereby deposed and stated that he acknowledges and accepts all and every statement, declaration, admissions, dismissals and discharges made by ELIAS TSAKONITIS in our presence. Finally, ELIAS TSAKONITIS and his Counsel ELIAS SAGHIAS Barrister-at-law on the one hand and, CONSTANTINOS ANDREOPOULOS in his capacity of attorney of the Shipowners made a joint statement deposing that they acknowledged and accepted all and every point described hereabove, and jointly declared that they freely and without any reservation whatsoever abandon any right of opposing the terms of the agreement described herein both on the grounds of the law or on the merits of the case. More particularly, ELIAS SAGHIAS hereby states that he abandons all rights described in the Labour Agreement and concession.

In testimony whereof these present minutes of the proceedings were drafted and read clearly and distinctly to the hearing of all present, confirmed and duly signed by all present and by me Magistrate of the Peace.

Exhibit A

Costs of law and stamp duty Drachmae 931.20 were paid by the Shipowners as attested from receipt voucher No. 18331/68 signed by the Collector of Public Revenue.

Sgd: ELIAS TSAKONITIS, Deponent
 E. SAGHIAS, Deponent
 C. ANDREOPOULOS, Deponent

Sgd: A. PLINOS Magistrate
 S. KOUMBOUSI Clerk

Sgd: Clerk

Certified true and official transcript.

Official seal

Certified signature authentic.

Sgd: E. DIALYNAS, President
 Court of the First Instance

Piraeus, April 11, 1968

Official seal

Certified signature authentic of the Pres.

Court of 1st Inst. Piraeus.

Sgd: N. KRIOS Section Chief
 Ministry of Justice

Athens, April 11, 1968

Official seal

Certified true translation
 April 16, 1968

S. P. CARNAPAS

Exhibit A

KINGDOM OF GREECE	}	SS.
PROVINCE OF ATTICA		
CITY OF ATHENS		
EMBASSY OF THE UNITED STATES OF AMERICA		

I, RICHARD J. HIGGINS, Vice Consul of the United States of America at Athens, Greece, duly commissioned and qualified, do hereby certify that, to the best of my knowledge and belief, the signature subscribed to the foregoing documents, i.e.,

True copy of Decision, No. 631, of the Justice of the Peace at Piraeus, Greece, duly certified by the lawful custodian of such documents, in the matter of Elias N. Tsakonitis, seaman, and the Transpacific Carriers Corporation of Panama; with official translation thereof in English—

is the signature of G. Cardaras, Chief of the Bureau of Ministry of Foreign Affairs of Greece, and that by virtue of said office is empowered to certify, under the seal of the Ministry of Foreign Affairs of Greece, to the authenticity of the signatures and to the competency of officials of the Greek Government; and that the seal accompanying said signature is the seal of the Ministry of Foreign Affairs of Greece.

Embassy assumes no responsibility for the contents of the attached document.

Witness my hand and the seal of the Consular Section of the Embassy of the United States of America at Athens, Greece, this 17th day of April in the year 1968.

(SEAL)

RICHARD J. HIGGINS
Vice Consul of the United States
of America

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U.S. SUPREME COURT

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 651

HELENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.
Petitioners

vs.

ZACHARIAS RHODES
Respondent

BRIEF OF PETITIONERS

GEORGE F. WOOD
510 Van Antwerp Building
P. O. Box 2745
Mobile, Alabama 36601
Attorney for Petitioners

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals, Fifth Circuit, is reported as **Hellenic Lines Limited and Universal Cargo Carriers, Inc., Appellants v. Zacharias Rhoditis, Appellee**, 412 F. 2d 919.

The District Court opinion is reported at 273 F. Supp. 248.

JURISDICTION

The jurisdiction of this Honorable Court is invoked upon writ of certiorari granted to petitioner on January 12, 1970, under the provisions of Title 28, Section 1254(1), United States Code.

STATUTE INVOLVED

The principal statute involved is the Jones Act (41 Stat. 1007, Title 46, Section 688, United States Code), as follows:

“Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”

QUESTIONS PRESENTED

I

Were the lower courts correct in applying the Jones Act to an action by a Greek seaman, himself a resident of Greece, against a Greek corporate owner-operator for injury occurring aboard a Greek flag vessel, solely on the ground that the majority stockholder of the corporate shipowner resided in the United States, notwithstanding that he is a Greek citizen and is designated as a representative of Greece to the United Nations?

II

Were the lower courts correct in finding that the Greek flag of the HELLENIC HERO was a "Flag of Convenience" when the corporation was formed in Greece, by Greek citizens, in 1934, has continued to exist with home offices in Greece since that time; when all stockholders are Greek citizens; when two of its four trade routes do not touch the United States; when all of its crewing takes place in Greece and only Greek seamen are employed and when most of its vessels call in Greece where they are supplied and repaired?

III

Were the courts correct after making a determination that the Greek seaman (Plaintiff below) had a forum accessible to him in Greece to then add a second complete remedy under the Jones Act?

STATEMENT OF THE CASE

Respondent (libelant below) was born in Greece (A. 18-19, 191), is a Greek national (A. 18, 75), and at all pertinent times resided in Greece (A. 75). He signed on the SS HELLENIC HERO in Heraclion (Iraklion) Greece for a voyage commencing in Greece and ending in Greece (A. 18, 20). The contract of employment is in the form prescribed by the government of Greece following negotiations with Greek unions and ratification by Greek shipowners (A. 19-20, 73-4). The employment of all Greek seamen for service on Greek vessels is pursuant to this same collective agreement between the unions and the shipowners (A. 73-4).

Hellenic Lines Limited is, and was, the operator of the HELLENIC HERO at all pertinent times, and was the employer of Rhoditis (A. 18, 21, 67). Title to the HELLENIC HERO is in Universal Cargo Carriers, Inc., a wholly owned Panamanian subsidiary of Hellenic Lines Limited (A. 18, 65).

Hellenic Lines Limited is a pre-World War II company organized in Greece in 1934 and has continued to own and operate vessels in several trades since that time (A. 18, 68, Resp. Exhibit 2, at trial, Petitioner's Exhibit 2, A. 113-140). Some of its trade routes are to and from certain American ports; some do not touch American ports (A. 71-2, 136). All its trade routes do emanate from the Mediterranean, either from or in close proximity to Greece (A. 71-2). All of its stockholders are Greek citizens including its majority stockholder, Pericles Callimanopulos (A. 18, 68).

The HELLENIC HERO is, and always had been, duly registered as a Greek flag vessel and operated as such (A. 19, 75). She and her sister ships call regularly at Greek

ports; employ Greek seamen only (A. 66, 73, 86-7); and are regularly supplied and repaired in Greece (A. 81-2).

Respondent Rhoditis was injured aboard the HELLENIC HERO in the Port of New Orleans on August 3, 1965 (A. 9). He was initially treated for a period of less than two weeks in New Orleans and was returned to his home in Greece at the expense of owners (A. 24-5, 75-6). The remainder of his treatment and recuperation period took place in Greece (A. 25, 76). At the time of trial he was in Greece or sailing from Greek ports (A. 95).

Hellenic Lines Limited is domiciled in Greece, has a large home office in Piraeus, Greece, is subject to the laws of Greece and stands ready to respond to the provisions of Greek law to the benefit of Rhoditis (A. 25, 69, 77-9, 81). As a matter of fact it has already partially responded in that all medical expenses have been paid by petitioner in Greece and a portion of the other benefits accruing under Greek law have been paid by Hellenic Lines Limited and accepted by Rhoditis (A. 76, 92-3).

Pericles Callimanopulos is the majority stockholder of Hellenic Lines Limited; owning more than 95% of the stock of this corporation. Mr. Callimanopulos is a Greek national who was the organizer of Hellenic Lines in 1934 (A. 68). He has resided in the United States since 1945 as a resident alien and treaty trader; and, since 1963, has been a representative of Greece to the United Nations (A. 68-9).

Respondent (libelant below) did not plead, nor seek to prove, provisions of the Greek law covering an injury under the circumstances of this case. Instead, libelant filed a motion asking the District Court to declare that the Jones Act applied (A. 58). The shipowner (respondent below) filed a motion to dismiss in the District Court based upon the express ground that American law, in-

cluding the Jones Act, did not apply to this situation and since libelant did not plead Greek law, there was no area of operation for the court (A. 15-17). The motion was denied by the District Court (A. 58) and subsequently the District Court expressly ruled that the Jones Act was applicable to the circumstances of this case (A. 99).

Issue was joined including a defense that raised the same question as had been raised on the motion to dismiss, i. e., that American law did not apply and libelant had not pled the provisions of the Greek law (A. 61 at 63). After trial, the District Court entered a judgment for the libelant which was affirmed on appeal (A. 99-100, 100-112).

CONFLICTING DECISION

The identical question presented to the District Court and to the Court of Appeals in this cause, was before the Second Circuit in 1966 in the case of **Tsakonites v. Trans Pacific Carriers Corp. and Hellenic Lines Limited**, 368 F. 2d 426, cert. den. 386 U. S. 1007. Like Rhoditis, Tsakonites was a citizen and resident of Greece and was injured on an Hellenic Lines vessel in a United States port. The Second Circuit affirmed the dismissal of the action holding expressly that American law did not apply. Tsakonites then pursued his remedy in Greece and recovered the benefits accorded him under the laws of Greece (Appendix I to this brief). In its affirmance, the Second Circuit based its decision on the paramount importance of the "law of the flag":

"Wherever, as here, there are various factors to be weighed for and against jurisdiction, the decision must be controlled by the more weighty. . . . The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance."

PROPOSITIONS OF LAW

I

In a Civil Controversy Between a Foreign Seaman and His Foreign Shipowner Employer, the Vessel's Flag Is the Determinant of the Law to Be Applied in the Absence of Some Heavy Counterweight.

II

The Only Effective Counterweights to the "Law of the Flag" Are (1) American Citizenship or Domicile of Seaman; and (2) American Citizenship (Allegiance) of Vessel Owner-Employer, Since These Considerations Affect the National Interest.

III

Substantial Commerce in United States Ports, Residence of Alien Majority Stockholder, Place of Accident, Inaccessibility of Greek Forum or Possible Greater Financial Reward Under American Law, Are Transitory or Secondary Elements. None Is a Sufficient Counterweight to Overbalance the Law of the Flag, and the Law of Greece Applies.

IV

Since American Law Does Not Govern and Greek Law Was Neither Plead Nor Proven, There Was No Area of Action for the Court and the Motion to Dismiss Should Have Been Granted.

ARGUMENT

I

In a civil controversy between a foreign seaman and his foreign shipowner employer, the vessel's flag is the determinant of the law to be applied in the absence of some heavy counterweight.

The starting point for all controversies involving the law to be applied to an action between foreign citizens for injury aboard ship is the case of **Lauritzen v. Larsen**, 345 U. S. 571. There the Court organized and recorded the criteria to "resolve conflicts between competing laws" and reviewed in logical sequence the comparative values of each of the elements as established in the Admiralty. It was pointed out that the criteria "appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority" (345 U. S. 583) (emphasis supplied).

There then followed the listing and weighing of the seven elements to be considered. These seven elements (characterized by the Fifth Circuit as the "seven immortal pillars of **Lauritzen**") would seem to include almost every conceivable circumstance and, indeed, only in the case at bar does there seem to be any serious effort to escape its confines. Every case cited in the District Court and the Court of Appeals as authority to depart from the measuring stick of **Lauritzen** is, in reality, squarely within the seven elements. This conclusion will be demonstrated in the argument under Proposition II of this brief.

In assigning weight to be accorded each element, this Honorable Court, in **Lauritzen**, established three categories of elements. These were characterized by the Court as:

(1) The "prevailing" or "most venerable and universal" rule, or that which accords "cardinal importance to the **Law of the Flag**. This element governs unless a "heavy counterweight" appears.

(2) The second category, the "heavy counterweights," contain two elements:

(a) "The allegiance or domicile of the injured" and

(b) "The allegiance of the defendant shipowner."

(3) The third division established in **Lauritzen** could be described as the secondary or transitory elements, in that they are not controlling in the face of "the flag" and the "two heavy counterweights." This division includes (a) Place of the Wrongful Act, "of limited application to shipboard torts"; (b) Place of contract, usually "fortuitous"; (c) Inaccessibility of Foreign forum, perhaps "persuasive for exercising discretionary jurisdiction . . . but not persuasive as to the law by which it shall be judged"; and (d) Law of the Forum, there is "no justification for altering the law of a controversy just because local jurisdiction of the parties is attainable."

So then, there is established the prevailing, or prima facie, determinant as to the law to be applied. "The Law of the Flag." In reaching this conclusion in **Lauritzen**, this Court quotes from the earlier cases of **U. S. v. Flores**, 289 U. S. 137, 158, and **Cunard Steamship Co. v. Mellon**, 262 U. S. 100, 123:

"and so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done onboard which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the

nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require . . . ' This was but a repetition of settled American doctrine."

"These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears" (345 U. S. 585-6).

The validity of the "law of the flag" as the beginning point to control matters having to do with the internal affairs of a ship, was re-affirmed (in 1963) in **McCulloch, Chairman, etc. v. Sociedad Nacional de Marineros de Honduras**, 372 U. S. 10, when the Court was asked to apply the National Labor Relations Act to a Honduran flag vessel. The application of American law to matters between vessel owner and seaman was rejected in the following terms:

"Therefore, we find no basis for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag, contrary to the recognition long afforded them not only by our State Department but also by the Congress. In addition, our attention is called to the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship" (372 U. S. 20-21).

The fact that it is the Jones Act with which we are concerned in the case at bar, does not affect the "venerable and universal" applicability of the law of the flag as it existed prior to the enactment of the Jones Act. That Act must be interpreted and applied in a manner consistent with long established maritime principles, including the importance accorded the law of the flag. **Rómero v. International Terminal Operating Co., et al.**, 358 U. S. 354, 382.

The case of *Tjonaman v. A/S Glitre & Fearnley & Eger* (2 CA 1965), 340 F. 2d 290, cert. den. 381 U. S. 925, expresses it in this way:

"Since the *Bartholomew* decision the Supreme Court has re-emphasized the paramount importance of the law of the flag. *McCulloch v. Sociedad Nacional, etc.*, 372 U. S. 10. This leaves no doubt that the starting point for weighing and evaluating of factors is consideration of that law. The court said, in *Lauritzen*, 'perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag'."

"The ultimate issue, then, is whether the substantiality of other existing factors establishing a connection with the United States is sufficient to outweigh the 'venerable and universal rule'."

Rhoditis was an employee of Hellenic Lines Limited, who operated the *HELLENIC HERO*. This vessel was, and is, registered under the Greek flag. Unless some "heavy counterweight" overbalances the law of the flag determinant, Greek law must apply.

II

The only effective counterweights to the "law of the flag" are (1) American citizenship or domicile of seaman; and (2) American citizenship (allegiance) of vessel owner-employer, since these considerations affect the national interest.

Notwithstanding many efforts by able counsel representing foreign seamen to establish sundry elements as "heavy counterweights", only two have ever succeeded. The two elements which have been deemed sufficient to outweigh and overbalance the ship's flag are (1) an affected seaman who is a citizen of or resident in the United

States; and (2) a vessel owner who is an **American citizen**. Under these two categories fall all the cases cited in the opinions of the District Court and Court of Appeals as authority for applying the Jones Act in the instant case.¹

Yet, it is undisputed that Rhoditis was a resident of Greece and that his employer, Hellenic Lines Limited, was a Greek corporation with no American citizens owning or controlling it, directly or indirectly.

When reference is had, once again, to **Lauritzen** to ascertain the basis for designating counterweights which overbalance the "law of the flag", the limitation to these two elements is understandable. Only those "connecting factors" will suffice to outweigh the flag which are such that "the national interest (will be) served by the assertion of (American) authority".

The national interest of the United States is served when its laws are applied to seamen who are American citizens or who reside in the United States. These are the precise classes of individuals for whose benefit the Jones Act was enacted. **Lauritzen** and **Romero**, *supra*. It fol-

¹ **Bartholomew v. Universe Tankships, Inc.**, 263 F. 2d 437 (2 C. A.) (All stockholders of the ultimate corporation were American citizens as were all corporate officers); **Pavlou v. Ocean Traders, etc.**, 211 F. Supp. 320 (Management of vessel in domestic corporation of New York); **Southern Cross S. S. Co. v. Firipis**, 285 F. 2d 651 (Involved American citizens as part owners and as management personnel). **Voyiatzis v. National Shpg. & Trading Corp.**, 199 F. Supp. 920 (Stock of Panamanian corporate shipowner owned entirely by one American citizen); **Zielinski v. Empresa Hondurena de Vapores**, 113 F. Supp. 93 (Stock of Honduran corporate shipowner owned by American corporation); **Urayic v. F. Jarka Co.**, 282 U. S. 234, and **Gambera v. Bergoty**, 132 F. 2d 414 (The latter two involved seamen who were American citizens or domiciliaries). The classic "flag of convenience" or "flag of necessity" or "runaway vessel" situation, by whatever name known, is that of American citizens acquiring ships and then procuring foreign registration in an effort to avoid American laws. But, always, there are American citizens.

lows logically that in the case of an injury to a seaman who is a citizen or domiciliary of the United States one of the intended group is affected, the national interest is involved, there arises a heavy counterweight, the law of the flag is overbalanced and the Jones Act is properly applied. This was the exception to the law of the flag under which the cases of **Uravic v. F. Jarka Co.**, 282 U. S. 234, and **Gambera v. Bergoty**, 132 F. 2d 414, fall. These were two of the cases cited below in support of application of the Jones Act to Rhoditis; but Rhoditis was a citizen and domiciliary of Greece.

The national interest of the United States is likewise served when the Jones Act is applied to American citizens who seek to evade the responsibilities imposed by virtue of their citizenship through the creation of paper foreign corporations to hide their American citizenship. It is in the national interest that laws enacted to govern the operation of its domestic corporations and individual citizens should not be frustrated by so simple a ruse. The case of **Southern Cross Steamship Co. v. Firipis**, 285 F. 2d 651 outlines the practice in these words:

“ ‘But it is common knowledge that in recent years a practice has grown, particularly among **American shipowners**, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against **American shipowners**, the obligations which our law places upon them.’ ” (Emphasis supplied.)

Perhaps the most famous of the “flag of convenience” cases wherein American citizens are concealed behind transparent foreign corporations is **Bartholomew v. Universe Tankships, Inc.**, 263 F. 2d 437, wherein the court finds not only American citizens hiding but also a resident seaman involved:

"... the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. (Citing cases.)"

"This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag," . . .

"We also think the evidence overwhelmingly establishes that Bartholomew had sufficient presence and intent to be deemed a resident and domiciliary of the United States for the purpose of determining whether or not the Jones Act is applicable." (Emphasis supplied) (263 F. 2d 442.)

These then are the two overriding elements, the only two which have been sufficiently in the national interest to call for the interposition of American law to disputes arising between foreign seamen and foreign flag vessels. The case at bar falls under neither.

III

Substantial commerce in United States ports, residence of alien majority stockholder, place of accident, inaccessibility of Greek forum or possible greater reward under American law, are transitory or secondary elements. None is a sufficient counterweight to overbalance the law of the flag, and the law of Greece applies.

In the lower courts, Rhoditis urged the frequency of calls at U. S. ports, the residence of the alien majority stockholder and the place of accident as sufficient to impose American law (The Jones Act) in contravention of the law of the flag. Two of these were directly considered in **Lauritzen** and relegated to secondary status while the

third was rejected by necessary implication. All fall within the category which may be characterized as transitory or "fortuitous" elements and none is such that the national interest would require the assertion of the authority of American law.

In *Lauritzen*, this Court discounted frequency of activity in U. S. ports as a decisive counterweight to the "law of the flag" in these words:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ship. But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality" (345 U. S. 581).

Vessels call where the cargo is. To permit a richer nation with greater commerce to impose its laws on the internal operations of foreign vessels by virtue of its volume of commerce would allow it unfairly to usurp through sheer wealth the prerogatives of its sister nations.

The place of the injury was also accorded little weight in the determination of the law to be applied. In *Lauritzen* your Honors pointed out that "(T)he test of location of the wrongful act . . . is of limited application to ship-board torts because of the varieties of legal authority over waters she may navigate . . ." In *Romero* the Court expanded somewhat on the thought:

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country." (358 U. S. 384.)

It is, of course, purely fortuitous that the accident happened in New Orleans rather than in some foreign port or on the high seas.

The third factor relied upon by Rhoditis to call for the imposition of American law, the residence of the alien majority stockholder in the United States, is quite similar in effect to the other factors of the fortuitous or transitory category. By its nature it belongs to the group of elements such as place of contract, place of accident and volume of commerce. Domicile or residence, on the one hand, and citizenship, on the other, are quite different concepts.

This distinction was recognized in *Lauritzen* when this Honorable Court designated the heavy counterweights in differing terms:

"3. **Allegiance or Domicile of the Injured.**— . . . each national has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self support . . .". (345 U. S. 586.)

"4. **Allegiance of the Defendant Shipowner.**—A state 'is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed.' *Skiriotes v. Florida*, 313 U. S. 69, 73. *Steele v. Bulova Watch Co.*, 344 U. S. 280, 282, . . ." (Emphasis supplied.) (345 U. S. 587.)

The term "allegiance" must be equated with "citizenship", as this court did in the quotation set out above

under Element 4. On the other hand, "domicile" equates with "residence". The two terms were used in the disjunctive as applied to seamen but only "allegiance" with respect to the shipowner was considered significant.

The Jones Act was enacted for the benefit of "any seaman". This term, by construction, is restricted to a seaman who is a resident or citizen of the United States. This is consistent with the national interest. The statute is not punitive, but protective.

The exclusion of the word "domicile" from the phrase "Allegiance of the Defendant Shipowner" leaves the word "allegiance" unhampered and unrestricted by any concept of domicile. A citizen's allegiance is not conditioned on location. Domicile is always dependent upon location, coupled with intent. It must be presumed that the differing phraseology applied to seamen and shipowner was the result of thoughtful reflection by the Court.

Residency cannot be equated to citizenship. Citizenship is not dependent on locale, whereas residence is. Residence can be changed in an instant. It is transitory. The Court of Appeals bottomed its decision upon the residence of the majority stockholder and has thereby effected a change in that particular **Lauritzen** test which is founded upon citizenship (allegiance) as applied to the shipowner-employer. Should Mr. Callimanopulos remove his residence to Canada, under this new counterweight initiated by the Court of Appeals, the laws of Canada would then instantly, albeit temporarily, apply to all seamen on all vessels operated by the corporation of which he is the dominant mind. If Mr. Callimanopulos a week later moved to Mexico, the applicable law governing some 1100 seamen serving aboard Hellenic Lines vessels would again change. Such a profound effect cannot be justified by a simple change of residence of one who stands as the major stockholder of a corporation. These would indeed be shifting sands in

the conflicts of laws. It cannot be rationalized that international maritime law was, is or should be based on such a transitory concept of locale in such a delicate field of international relations with possible retaliation by one nation against another for unjustifiable interference with its citizens, corporations, vessels, seamen and foreign commerce.

Only passing reference is made in this brief to basic principles governing international relationships and the necessity of respect by the sovereign for the laws of other nations. Such lack of emphasis is, of course, not attributable to the unimportance of these concepts, for indeed they are at the heart of the matter before the Court, but out of an appreciation for the familiarity of the court with the principles. **Lauritzen** demonstrated an appreciation for the self-restraint which a nation, and certainly so great a nation as our own, must exercise in imposing its laws upon relationships between non-Americans:

“But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; . . .”

(345 U. S. 571, 582).

Running through and forming the framework of each proposition and argument of this brief are those familiar principles which permit civilized nations to co-exist and each to exercise its proper jurisdiction over matters of its own concern.

That this Honorable Court is fully cognizant of these self-imposed boundaries is confirmed in **Romero v. International Terminal Operating Co.**, 358 U. S. 354, 382-3:

“ . . . with due recognition of our self-regarding respect for the relevant interests of foreign nations in the regulation of maritime commerce as part of the legitimate concern of the international community. . . .”

"The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this court is adjudicating issues inevitably entangled in the conduct of our international relations."

The Court of Appeals relies upon **Leonhard v. Eley**, 151 F. 2d 409, as support for the general proposition that an alien acquires the national character of the place where he is domiciled even though he may not become a citizen thereof. With respect, this case is concerned only with the personal obligations of an individual to the nation where he is residing and where he is entitled to remain. Even if it be assumed that this case stands for the principle in the context as set out, it is not in point. It has no relation to the imposition of American law to contacts between the resident alien and another alien. It does not deal with foreign flag, foreign owned, shipboard accidents to foreign seamen under any type of tort statute, much less the Jones Act. It cannot be construed as controlling of the internal relationships between seamen and ships of a foreign corporate owner.

The vessel owner-employer is a Greek corporation, Hellenic Lines Limited, formed in Greece some 36 years ago. If the corporate veil be pierced, Mr. Callimanopulos, the majority stockholder is a citizen of Greece. During at least a portion of the time he has resided in the United States he has not been eligible to apply for American citizenship. During the remainder of the time he has not chosen to do so. His allegiance remains, as it always has, with Greece. His designation as a representative of Greece to the United Nations is a strong indication of allegiance to that nation. He has maintained his strong ties with Greece through the operations there of the company which he controls.

Rhoditis sought to make much of the residence of Mr. Callimanopulos in Connecticut as establishing New York as the base of operations for Hellenic Lines Limited. But this is contrary to the testimony at the trial. If the mind of Mr. Callimanopulos be construed as the "base of operations" of Hellenic Lines, then it moves with Mr. Callimanopulos to Connecticut and New York and Piraeus and London and elsewhere as Mr. Callimanopulos moves. It is transitory and the law to be applied would be decided by the fortuitous circumstance of Mr. Callimanopulos' whereabouts upon the happening of an injury. But the overwhelming evidence is that the home office of Hellenic Lines Limited is in Greece. There is an additional large office at New York and somewhat smaller ones in New Orleans and in Turkey; but Piraeus remains as the main or home base. A consideration of attendant factors will demonstrate the strong Greek ties of the corporate owner. All vessels call at Greece, all shipboard personnel are Greek, signed on in Greece pursuant to the Greek Collective Agreement, all contracts call for application of Greek law, all Board meetings are in Greece, all supplies possible are purchased in Greece and all repairs are made there. Of major significance is the fact that all trade routes operate from the Mediterranean, in and around Greece, some to U. S. ports, some not, but all to the vicinity of Greece. With respect, this is no flag of convenience but a bona fide Greek operation.

The residence of the majority stockholder, like the place of injury and the substantial commerce with U. S. ports is transitory and secondary and does not constitute such a counterweight as to overbalance the law of the bona fide Greek flag of this vessel.

It was suggested by counsel for Rhoditis below that, for some reason, Rhoditis might not now have available to him a remedy in the Greek courts and under the Greek

law. No evidence was adduced on the trial that would justify such a conclusion. Indeed, there are several rather cogent assurances that the Greek forum would be available to him. (1) The selfsame situation was faced by the seaman in the case from the Second Circuit which the Fifth Circuit declined to follow. **Tsakonites v. Trans Pacific Carriers Corp.** (2CA 1966), 368 F. 2d 426. Mr. Tsakonites found the Greek courts available to him to enforce his remedy under the laws of Greece following the dismissal of his action by United States courts. Attached to this brief, as Appendix I, is the decision actually entered by the Greek courts in the Tsakonites case. Mr. Rhoditis would have the very same forum available to him as did Mr. Tsakonites.

(2) Rhoditis has already received a portion of the benefits to which he is entitled, including the payment of his medical expenses and a part of the compensation due him, both pursuant to the laws of Greece (A. 76, 92-3). These he has accepted and retained. It would be strange were the Greek courts now to abandon Mr. Rhoditis in view of the partial relief which he has already enjoyed.

(3) The home office of Hellenic Line Limited, and its subsidiary companies, is in Piraeus, Greece, where it is subject to service and the jurisdiction of the Greek courts. Further, throughout the entire proceedings which are now before this Honorable Court, assurances have been made at each stage that Hellenic Lines Limited stands ready to respond to the jurisdiction and orders of the appropriate Greek forum, if such assurance or action be necessary.

(4) The courts of the United States are themselves available, as a matter of judicial discretion, to enforce the rights of Rhoditis under the Greek law should the Greek courts decline now to do so. In view of the history

of this case, it would seem a certainly that should the Greek courts decline to entertain the jurisdiction of Rhoditis' claim to completion, the courts of the United States would take jurisdiction, upon proper pleading, to enforce the benefits of the Greek law as it applies to this alien seaman.

These safeguards seem effectively to dispose of any contention that Rhoditis will now be without a remedy should American courts decline to apply the American law to his claim against his shipowner-employer. On the other hand, even were the courts of Greece inaccessible to Rhoditis, this would not be a basis for the application of American law to this dispute; but rather, for the exercise of discretionary jurisdiction by the court to enforce the rights granted to Rhoditis under the Greek law. *Lauritzen v. Larsen*, 345 U. S. 571, 589-90. But Mr. Rhoditis has never sought to enforce his rights under the Greek law in the courts of the United States. He did not plead nor did he seek to prove the benefits which Greek law conferred upon him under the circumstances of this case. Instead, he elected to proceed in toto on the assumption that American law applied.

Therefore, it is not of significance for Rhoditis' counsel to urge that he has no remedy under the Greek law. Such a conclusion is neither accurate nor pertinent.

It is apparent that the real thrust of almost five years' efforts to apply American law to a dispute between an alien seaman and his foreign shipowner employer is a hope of somewhat greater quantum of recovery under American law than Rhoditis would enjoy under the laws of Greece. However, the last paragraph of the *Lauritzen* opinion makes it clear that the prospect of greater recovery by virtue of the interposition of American law into this dispute does not, of itself, justify such an act. It is no basis either to oust the proper laws of another

flag, or, as would be the case here, to add onto the Greek remedy enjoyed by Rhoditis a cumulative remedy under American law. For, as in **Lauritzen**, this is not an "either-or" situation but rather an effort to give to the alien seaman a choice between laws of two nations as he finds most advantageous to him. Neither the decree of the District Court nor of the Court of Appeals purports to oust the Greek remedy available to Rhoditis and the others of the approximately 1100 Greek seamen employed by Hellenic Lines Limited. These decrees simply "add on" the Jones Act and thereby grant to the Greek seaman a cumulative remedy, placing the Greek seaman on the Greek flag vessels in a more favorable position than the American seaman for whose benefit the Jones Act was enacted. Since the Greek remedy is a type of compensation without regard to fault (plus punitive damages where fault exists) (A. 77-9, 92-3), the Greek seaman would then be in the enviable position of being able to elect as between the sure compensation type remedy of his homeland and the probably more lucrative rewards under the Jones Act and general maritime law of the United States, should there exist negligence or unseaworthiness.

With respect, there is no justification nor desirability to provide for a foreign seaman on a foreign flag vessel such a cumulative remedy.

IV

Since American law does not govern and Greek law was neither plead nor proven, there was no area of action for the court and the motion to dismiss should have been granted.

The proposition just stated summarizes the conclusion of the case of **Tsakonites v. Trans Pacific Carriers Corp. and Hellenic Lines Limited**, 368 F. 2d 426, cert. den. 386 U. S. 1007. As was recognized by the Fifth Circuit in the

instant case, the **Tsakonites** case reached a contrary result on identical facts. Both cases deal with a Greek citizen and resident who, while a seaman on an Hellenic Lines Limited vessel, was injured in an American port. The Second Circuit dismissed the action for the reasons summarized in Proposition V of this brief, whereas the Fifth Circuit declines to do so.

With respect, the decision by the Second Circuit, whose experience and prestige as an Admiralty forum are long and well recognized, is the sound one, represents established law as determined by the Supreme Court and should prevail over the differing result in the Fifth Circuit.

In **Tsakonites** the Second Circuit finds its answer to the matter in dispute squarely within the provisions of **Lauritzen v. Larsen** and declines to introduce any new or differing element. On the other hand, the Fifth Circuit in **Rhoditis** pushes beyond **Lauritzen** by piercing the corporate veil of the Greek owner and finding there a Greek citizen as majority stockholder, takes its departure from **Lauritzen** to equate residence with citizenship and concludes that the "ownership" is "essentially American." This destination is reached despite the total absence of any American citizen, either corporate or individual; despite the inability to make of this case a valid "flag of convenience" exception, and expressly by going outside and beyond the "seven talismen" of **Lauritzen**. It simply adds on an eighth element (base of operations or residence of major stockholder), and designates it as a third heavy counterweight sufficient to overcome the law of the flag.

Seemingly, this result is reached on the basis of the District Court opinion in the Second Circuit in **Pavlou v. Ocean Traders Marine Corp.**, 211 F. Supp. 320. This it does despite the fact that the Second Circuit in the **Tjona-man v. A/S Glittre and Fearnley & Eger**, 340 F. 2d 290,

cert. den. 381 U. S. 925 (1965), relegated the **Pavlou** decision to those which mistakenly limit "the dominating importance of the law of the flag to cases with facts practically identical to the **Lauritzen** case". In **Tjonaman** the Second Circuit then went on the note to re-emphasis on the paramount importance of the law of the flag in the **McCulloch** case. Thus the effect of the **Pavlou** decision in the Second Circuit has been completely destroyed by **Tjonaman**, and, more recently, by **Tsakonites**.

Petitioner has, by diligent research, been unable to find any case at the Appellate level, other than **Rhoditis**, which has overturned the paramount effect of the law of the flag by any counterweight save American citizenship or residence of the seaman or American citizenship of the shipowner-employer. This is in accord with **Lauritzen** (1953) and **McCulloch** (1963). It remained the law when certiorari was denied in **Tjonaman** in 1965 and in **Tsakonites** in 1967.

With respect, the decision of the Second Circuit in **Tsakonites** is correct and the conflict between the circuits should be resolved in accordance with **Lauritzen v. Larsen** and with the **Tsakonites** decision in the Second Circuit.

SUMMARY OF ARGUMENT

Rhoditis is a citizen and resident of Greece who was injured aboard the **HELLENIC HERO**, a Greek flag vessel. **Hellenic Lines Limited** was the employer of **Rhoditis**, the operator of the vessel and the owner of all the capital stock of the shipowner corporation. All stockholders of **Hellenic Lines Limited** are Greek citizens and its home office is Greece.

The law to be applied under such circumstances is ordinarily and traditionally the law of the flag. Only when the seaman is an American citizen or resident or

when the owner of the vessel, either directly or indirectly, is an American citizen is there basis for departure from the law of the flag.

That Hellenic Lines Limited has substantial commerce in the United States, that its majority stock holder, while a Greek citizen, resides in the United States, or that the accident happened in New Orleans, is not sufficient to outweigh the law of the flag.

Since American law does not apply, and since the action below did not seek jurisdiction of the court for the purpose of applying the laws of Greece, they having been neither plead nor proven, the District Court had no area of operation and hence, should have dismissed the action upon motion.

Petitioner urges, with respect, that the opinion of the Court of Appeals be reversed and the cause be remanded with instructions that it be dismissed.

Respectfully submitted

GEORGE F. WOOD

510 Van Antwerp Building

P. O. Box 2245

Mobile, Alabama 36601

Attorney for Petitioners

APPENDIX I TO PETITIONER'S BRIEF

(Heading of Bureau of Traduction of Greece)

No. 10396

**MAGISTRATES COURT OF THE PEACE
PIRAEUS
GREECE**

Decision No. 631

PROCEEDINGS OF THE MAGISTRATES COURT OF THE PEACE

Compromisory Agreement Under Act 551

In Piraeus this third day of the month of April in the year one thousand nine hundred and sixty-eight (April 3, 1968), Wednesday, 11:30 a. m., and at the Magistrates court of the peace before me **ALEXANDROS PILINOS**, Magistrate for the Peace, in the presence of the Clerk of the Court **Spyridon Koumbousis**, there appeared: 1) **ELIAS TSAKONITIS**, son of **NICOLAOS**, seaman, registered in the marine registers of the Mercantile Shipping under reg. serial No. 13763 holder of identity pass No. 15452 of 1968, of Piraeus, Odos Kountouriotou Street 149, accompanied by his counsél **Elias Saghias**, attorney-at-law of Piraeus, holder of identity pass No. 293/68 issued by the Lawyers Association of Piraeus, and 2) **CONSTANTINOS IOANNIS ANDREOPOULOS**, barrister-at-law, resident of Piraeus, holder of license No. 32/1968 issued by the Lawyers Association of Piraeus, acting in the name and on the behalf of the Transpacific Carriers Corporation of Panama, duly represented in Greece shipowners of the merchant S/S Vessel **HELLENIC SPIRIT**.

Both the above named made each the following statement:

"I ELIAS TSAKONITIS hereby depose and state that under an Agreement dated June 4, 1959 for sea service signed at Piraeus, I signed for service on the above mentioned vessel in pursuance with the terms and conditions prescribed in the Collective Agreements Procedure in force in Greece and those which were included in the Agreement of Service. In fact, in compliance with the said Agreement of Service I left Piraeus and on June 5, 1959 I was registered for service at Iraklion, Crete on June 5, 1959. I continued to discharge my duties as member of the crew until September 26, 1959 while the vessel was anchored at the Port of New York for offloading. Going down the stairs leading to hold No. 3 I slipped and fell over on the wooden floors of the hold, hitting myself against the floor injuring my left hip. I was at once carried-off in an ambulance to the Lutheran Medical Centre of New York, dismissed from service as a member of the crew on account of an accident and remained under treatment on the expense of the shipowners. After the operation and the medical observation did not regain fitness and capacity to continue work but I became permanently partially unfit for work to an extent of 60%, and therefore I am entitled by law to an indemnity in accordance with the provisions prescribed under Act No. 551/1920 applying to labour accidents and casualties.

I further depose and state that during the time I served on board the said Vessel I was in receipt of monthly salary including overtime pay and other extra allowances amounting to £49.16.0 plus food rations in commodities estimated at £11.5.0. In other words, I was paid £61.1.0 per month corresponding to the salaries and emoluments drawn by members of the crew who were in the same scale of pay during the 12 months preceding the accident. On

that basis, I, am therefore entitled to receive an indemnity amounting to Drachmae 77,547 (seventy seven thousand five hundred and forty-seven) the shipowning company is responsible to pay to me in their capacity of owners and directors of the vessel I was serving during the accident."

The Attorney of the Shipowners, on the other hand, deposed and states as follows:—

"I, acting as the lawful attorney of the Shipowning Company hereby deny, dispute the veracity and oppose every point brought forward in the arguments and assertions of ELIAS TSAKONITIS on the grounds that the accident was chiefly due to his own fault and therefore the victim is entirely held responsible for his injury as a result of very serious negligence and unforgivable action that led to the accident, and moreover to his breach of the labour regulations and procedure applicable to carriers because he resorted to the Southern District Court of New York applying for indemnity. His application was finally turned down by the Court whereupon my Assignors reserve all rights under the law in connection with the considerable expenses they incurred in the form of cost of law and incidentals for the hearing entirely on the personal responsibility of the Plaintiff ELIAS TSAKONITIS. Furthermore, the partial incapacitation of the plaintiff resulting from the accident amounts only to 60% and not 20%. In any case, however, the amount of the incapacity for work as seaman did not make the plaintiff permanently unfit for work. Moreover in pursuance with the provisions prescribed in article 17 of Act 551/1920 the claim submitted by the plaintiff for indemnity as a result of an accident to him which occurred on September 26, 1959 is no longer valid and is written-off."

Claimant ELIAS TSAKONITIS opposed and raised objections to every point suggested by the Attorney of the Shipowning Company, more particularly as regards the

point of negligence on the part of the Claimant or the nature of his incapacity asserting to be for permanent character but partial to the degree of 60% acknowledged as such by the competent Medical Board of the Marine Veterans Social Insurance Fund, which, on these grounds, granted to him a pension allowance. Finally, the Claimant took objection to the invalidation and writing-off of his claim because according to the decision of the Supreme Court of Justice AREIOS PAGOS under decree No. 066 of 1966 published in the Legal Tribune page 1006 of 1966 claim for the writing-off of a lawful claim, under the provisions prescribed in Act 551/1920, may be written-off after the lapse of 20 years similar to the period set down in connection with ordinary claims applicable to accidents to workers at sea. On the other hand the attorney of the Shipowners declared that all the points he submitted to Court are grounded on the point of the law and cannot stand any objection or opposition or could they be influenced or weakened from the assertions of ELIAS TSAKONITIS, however, to save time and to avoid further judicial proceedings, disputes and contentions and all legal entanglements, costs of law and incidentals, is prepared to accept and hereby accepts to settle forthwith the entire indemnity demanded by the Claimant ELIAS TSAKONITIS, and, hereby offers to pay to the Claimant the sum of Drachmae 77,547 (seventy-seven thousand five hundred and forty-seven) in full settlement of his claim.

Now, inasmuch as both Parties jointly requested the Court to approve and to allow the compromisory agreement and settlement of the indemnity.

Whereupon the Magistrate of the Peace issued his reasoning and decision reading as follows:—

“WE, Magistrate of the Peace, having taken into consideration that Settlement of the Indemnity requested by the Parties concerned does not conflict with the

provisions prescribed in article 14 of Act 551/1920 as now amended, have approved and allowed the compromisory agreement between the Parties concerned and its full settlement."

At this juncture CONSTANTINOS ANDREOPOULOS in his capacity of attorney of the Shipowners counted and paid in my presence to ELIAS TSAKONITIS the sum of Drachmae 77,547 (seventy-seven thousand seven hundred and forty-seven Drachmae), collected as cash money by the Claimant ELIAS TSAKONITIS in the presence of his Counsel ELIAS SAGHIAS, Barrister-at-law, stating and acknowledging at the same time that his client ELIAS TSAKONITIS accepts the payment made and admits that he is entirely and completely satisfied and compensated, dismissing any other claim whatsoever of his Client from the TRANSPACIFIC CARRIERS CORPORATION owners and directors of the carrier HELLENIC SPIRIT of Panama, or from the Shipping Company "I ELLINIKI", the Shipping Agents and the Agents of the Carrier Vessel, the Master, officers, the crew of the vessel, the Insurance Agents and any other duly qualified representative or agent of the HELLENIC SPIRIT in connection with the accident he had while serving on board the said Carrier either under the provisions of Art. 551/2 of Act 3816/58 regarding procedure under the Private Mercantile Law or under any other provision of the Civil Law and Procedure and of any procedure and law provided in the Greek Law and Procedure or in any foreign Law and Procedure, particularly that of the United States of America in connection with any capital of money, interest thereon, costs, claim or demand raised by him for moral damages, compensation or other claim arising from the same cause and he, the Claimant, retains no other claim, demand or rights whatsoever on account of the same cause or reason either directly or indirectly. To the above statement made by his attorney the Claimant ELIAS TSAKO-

NITIS stated and deposed that none of the persons named here-above severally or jointly are to be held responsible or answerable regarding the accident which is entirely due to his own carelessness and negligence and not to any mechanic defect or to the absence of any necessary spare part of the vessel or of the machine installations or to any fault, failure, neglect, action or omission on the part of the Master, the Officers, the Boatswain, the members of the crew, or the shipowners and managers of the Shipping Company including their Seniors and Superintendents. Finally the Claimant abandons all and any right or rights whatsoever and claims against any person or persons whomsoever, or legal entities or corporations for repairs and indemnity as a result of moral injury.

On the other hand, CONSTANTINOS ANDREPOULOS in his capacity of duly commissioned attorney acting on the behalf and in the name of the TRANSPACIFIC CARRIERS CORPORATION, hereby deposed and stated that he acknowledges and accepts all and every statement, declaration, admissions, dismissals and discharges made by ELIAS TSAKONITIS in our presence. Finally, ELIAS TSAKONITIS and his Counsel ELIAS SAGHIAS, Barrister-at-law on the one hand and, CONSTANTINOS ANDREPOULOS in his capacity of attorney of the Shipowners made a joint statement deposing that they acknowledged and accepted all and every point described hereabove, and jointly declared that they freely and without any reservation whatsoever abandon any right of opposing the terms of the agreement described herein both on the grounds of the law or on the merits of the case. More particularly, ELIAS SAGHIAS hereby states that he abandons all rights described in the Labour Agreement and concession.

In testimony whereof these present minutes of the proceedings were drafted and read clearly and distinctly to the hearing of all present, confirmed and duly signed by all present and by me Magistrate of the Peace.

Costs of law and stamp duty Drachmae 931.20 were paid by the Shipowners as attested from receipt voucher No. 18331/68 signed by the Collector of Public Revenue.

Sgd: Elias Tsakonitis, Deponent
E. Saghias, Deponent
C. Andreopoulos, Deponent

Sgd: A. Plinos, Magistrate
S. Koumbousi, Clerk

Sgd: Clerk

Certified true and official transcript.

Official seal

Sgd: E. Dialynas, President
Court of the First Instance

Certified signature authentic.

Piraeus, April 11, 1968

Official seal

Certified signature authentic of the Pres. Court of 1st Inst.
Piraeus.

Athens, April 11, 1968

Official seal

Sgd: N. Krios, Section Chief
Ministry of Justice

Certified true translation

April 16, 1968

(Illegible)
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JUL 2 1970

E. ROBERT SEAYER, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED

AND

UNIVERSAL CARGO CARRIERS, INC.

Petitioners;

VS.

ZACHARIAS RHODITIS,

Respondent.

PETITION FOR REHEARING

GEORGE F. WOOD

Attorney for Petitioners

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED

and

UNIVERSAL CARGO CARRIERS, INC.

Petitioners,

vs.

ZACHARIAS RHODITIS,

Respondent.

PETITION FOR REHEARING

Come petitioners, Hellenic Lines Limited and Universal Cargo Carriers, and petition this Honorable Court for a rehearing on its decision entered on the 8th day of June, 1970, which decision extended the application of the Jones Act to a foreign seaman on a foreign flag vessel while in the employ of a foreign shipowner, on the basis of the domicile in the United States of the alien owner of the majority stock of the shipowner corporation. The following grounds for the petition are respectfully set forth:

I

The law of the flag outweighs the domicile of the majority stockholder in the determination of applicable law to internal affairs of a vessel.

II

The decision misconceives the purpose for which the Jones Act was enacted, that of protecting the rights of seamen. Instead, the Court uses the statute to penalize foreign shipowners whose majority stockholder resides in the United States and in the pursuit of the goal of economic equalization between American and foreign shipowners.

III

By this decision, the Court usurps the prerogative of the Congress by extending the reach of a statute of the United States to control relations between nationals of an alien flag, contrary to the intent of the Congress as established by long-standing authority.

Appended to this petition, as Appendix A, is an argument in support of the foregoing grounds. In addition, a brief on behalf of the Royal Greek Government is appended to this petition, as Appendix B and a brief on behalf of the Union of Greek Shipowners and the Chamber of Shipping of Greece is appended to this petition as Exhibit C.

Respectfully submitted,

GEORGE F. WOOD

Attorney for Hellenic Lines Limited
and Universal Cargo Carriers, Inc.

The undersigned counsel for the petitioners confirms that the foregoing petition is presented in good faith and is not for the purpose of delay.

.....

APPENDIX A

ARGUMENT

I

Since no later than 1923, when the case of *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, was decided,^o the law of the flag has been accorded paramount importance in the determination of the national law applicable to the internal relationships of owners and seamen. The overriding importance of the law of the flag continued through the *United States v. Flores*, 289 U. S. 137, and culminated in the controlling decision of *Lauritzen v. Larsen*, 345 U. S. 571. It was later re-affirmed in the cases of *McCulloch v. Sociedad National*, 372 U. S. 10, *Incres S. S. Co. v. International Maritime Workers Union*, 372 U. S. 24, *Benz v. Compania Naviera Hildago*, 352 U. S. 138, and, most recently, *International Longshoremen's Local 1416, etc. v. Adriadne Shipping Co. Ltd. et als*, 397 U. S. 195, 262.

The basis for its importance, quite aside from the dignity to be accorded to sister nations, their maritime enterprises and their right to the control thereof, is made clear in *Romero v. International Terminal Operating Co., et al*, 358 U. S. 354, 382, where the Court pointed out the unique value of the application of a single law to the internal affairs of a vessel:

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous one but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country."

Particularly must it be borne in mind that we are not here dealing with the ordinary "flag of convenience" vessel or shipowner. Hellenic Lines Limited was formed in Greece

in 1934 and at the time that its majority stockholder established a domicile in the United States as a resident alien, it was a going concern important in the maritime affairs of Greece. This is without dispute.

Under the decision in this cause, the venerable law of the supremacy of the "law of the flag" was swept aside by and made subordinate to the residence of an alien in the United States. Such residence, subject to change at will, is insignificant when compared to the more constant law of the flag. Not only is it transitory but the decision could lead to unfortunate consequences. Under the reasoning of the Court, a Greek seaman signing on an Hellenic Lines ship in Piraeus, Greece, and injured in that port on the date of sign-on, without ever going to sea or even visiting the United States, would have resort to the United States Courts with all the benefits of American law available to him. Not only would this be in contravention of his contract of employment but would call for a result not even remotely foreseen by the seaman in undertaking the employment. Of greater moment, it would constitute an intrusion of American law into relationships between foreign nationals in violation of the sovereign right of the nation of the flag to control its own affairs.

II

That the Court departed from the long established purpose of the Congress in the enactment of the Jones Act is inescapable from a mere reading of the opinion:

"We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act 'employer'". (Preliminary Print of Opinion, p. 4).

Were the purpose of the Jones Act to equalize economic protection and opportunities between American and foreign shipowners who have substantial contacts with the United States, the internal affairs of all foreign shipowners whose vessels call at American ports would thereby be controlled by American law. It cannot be thought that this was the intent of the Congress in enacting a law for the protection of seamen. The protective, perhaps even benevolent, purpose of this Act has been established from the beginning.

"The legislation. (Jones Act) was remedial, *for the benefit and protection of seamen* who are peculiarly the wards of Admiralty . . . Its provisions . . . are to be interpreted in harmony with the established doctrine of maritime law of which it is an integral part". *The Arizona v. Analich*, 298 U. S. 110, 123 (emphasis supplied).

In *Lauritsen* it was made clear that in keeping with this "harmony with the established doctrine of maritime law," the Jones Act was enacted within a framework of construction that gave weight to concepts of long standing. Among these concepts are the overriding weight of the flag and respect for the legitimate concern of other nations.

With respect, this basic purpose of the Jones Act should not be altered so as to convert the Act into a tool for the equalization of competition. The same justification would exist for establishing an import quota by judicial decree for the protection of American manufacturers. The control of competition has always been a matter within the purview of the Congress and as such is a matter for legislative rather than judicial action.

Since the instant decision has narrow application, in that it affects only those foreign corporate shipowners whose majority stockholder resides in the United States and maintains a "base of operations" here, the application of the

Jones Act could be simply defeated by the removal of the stockholder's residence from the United States. Such an escape hatch is not available to American citizens. Thus the competition based upon residence is not between American and foreign shipowners but, is in reality, between foreign shipowners whose majority stockholder resides in the United States and whose base of operations is here, on the one hand, and those who reside outside the United States, on the other. No such basis as promulgated by the Court exists for penalizing the alien who resides in the United States in his competition with non-resident aliens. Instead, the resident alien spends his income here, employs American citizens, bears a share of American taxes, and is an economic asset as compared to the non-resident alien. If the purpose of the Act were economic equalization it should be visited upon all foreign shipowners, not upon the resident alien alone, to his economic disadvantage with the non-resident alien.

The traditional purpose of the Jones Act is to benefit seamen. With respect, this Honorable Court should not depart from this purpose by an attempt to translate the statute into a vehicle for the equalization of competitive advantage.

III

As recently as March 9, 1970, this Honorable Court in *International Longshoremen's Local 1416, etc. v. Adriadne Shipping Co. Ltd. et als*, 397 U. S. 195, 25 L. Ed 2d 218 (No. 231 decided March 9, 1970) re-examined the Congressional intent to apply a statute primarily concerned with strife between American employers and employees to disputes between foreign ships and their foreign crews. The Court therein re-affirmed the cases of *McCulloch v. Sociedad National*, 372 U. S. 10, *Inces S. S. Co. v. International Maritime Workers Union*, 372 U. S. 24 and *Benz v. Compania Naviera Hildago*, 352 U. S. 138.

At page 262 of the *International Longshoremen's* case, the Court properly left to the Congress its prerogative to

determine the extent of the reach of the National Labor Relations Act:

"In these cases, we concluded that, since the act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews. Thus, we could not find such an intention by implication, particularly since to do so would thrust the National Labor Relations Board into 'a delicate field of international relations'. Assertion of jurisdiction by the Board over labor relations already governed by foreign law might provoke 'vigorous protest from foreign governments and . . . international problems for our government' . . . and 'invite retaliatory action from other nations'. Moreover, to construe the Act to embrace disputes involving the 'internal discipline and order' of a foreign ship would be to impute to Congress the highly unlikely intention of departing from the 'well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship,' a principle frequently recognized in treaties with other countries."

The Congress, in the Jones Act, as in the National Labor Relations Act, asserted no intent that it should have application to relations between foreign seamen on a foreign flag vessel owned by a foreign shipowner. With respect, the decision does so extend the reach of the Act in usurpation of the power of the Congress.

Respectfully submitted,

GEORGE F. WOOD

Attorney for Petitioners

APPENDIX B

IN THE
Supreme Court of the United States
OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL
CARGO CARRIERS, INC., *Petitioners,*
~~against~~
ZACHARIAS RHODITIS, *Respondent.*

**AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS' PETITION FOR REHEARING**

JAMES M. ESTABROOK,
*Counsel for the Royal Greek Govern-
ment as Amicus Curiae*

DAVID P. H. WATSON,
Of Counsel

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IN THE
Supreme Court of the United States

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No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO
CARRIERS, INC.,

Petitioners,

—against—

ZACHARIAS RHODITIS,

Respondent.

**AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONERS' PETITION FOR REHEARING**

STATEMENT

Petitioner, Hellenic Lines Ltd. has petitioned this Court for a rehearing herein on the grounds that the Summary Calendar time limitation did not permit full argument on the points that under Greek law the Greek flag cannot, considering the obligations involved, be considered a flag of convenience and further that the decision of this Court does not comply with rules of international law already pronounced by this Court emphasizing the importance of the flag of merchant vessels.

ARGUMENT

POINT I

THE GREEK FLAG IS NOT A FLAG OF CONVENIENCE.

While the Greek Law has not been applied to American firms as to business done abroad, now the American law has been applied to business done in what must be considered Greece, i.e., a Greek flag ship, the flag being bona fide and not a flag of convenience. This extension of national policy creates very serious international problems, especially considering respondent was treated in Greece and paid compensation under Greek law. Are American employers of American firms receiving full compensation and treatment under their State acts to be entitled to Greek relief on the grounds that they are primarily engaged in Greek business? Such is the effect of this decision, the Greek flag being bona fide.

While American firms may be satisfied to rely on Greek Courts, and counsel has arranged for American clients to be represented in Greece with satisfactory results, even though against Greek interests, similar treatment cannot in all candor be expected throughout the world.

Within the time limitations of the Summary Calendar full argument could not be presented to show that the Greek merchant marine is not only an important source of foreign exchange, but also an important sector of the national economy, employing in 1969 over 100,000 Greeks and bringing to Greece \$250,000,000 dollars per year of which \$5,200,000 was brought into Greece by Hellenic Lines. In fact, Greek flag ships are such an important segment of the Greek economy that the Government must protect Greek seamen by ensuring adequate provisions for medical care, compensation, and pensions in Greece under Greek law.

Such provisions involving liability without regard to fault are in accordance with the United States practice of furnishing free medical care to merchant seamen from U. S. flag vessels by the U. S. Public Health Service. The reimbursement for economic loss is, however, very different. A Greek seaman is assured of payment for injury and need not prove negligence.

The Court did not in any way deal with this point in the majority opinion, thus ignoring the practical effect of its decision.

In the present competitive market Hellenic must either move its principal office out of the United States, thus depriving the United States Treasury of taxes from its American based employees and United States citizens of employment, or cease operating, thus depriving Greek citizens of employment and dealing a severe blow to the Greek National economy.

The Royal Greek Government of course does not wish to lose the Hellenic Lines vessels, nor does it wish to deprive a NATO ally of Hellenic Lines tax revenue and emergency vessel commitment. Yet under this decision one of these results is inevitable.

POINT II

THE GREEK FLAG OF THE HELLENIC HERO IS ENTITLED TO MORE WEIGHT THAN THE DOMICILE OF THE PRINCIPAL STOCKHOLDER.

In earlier cases this Court had applied the law of the flag to determine the rights of a Danish seaman injured in Havana on a Danish ship trading between the United States and South America, *Lauritzen v. Larsen*, 345 U. S. 571 and to determine the rights of Honduran seamen on

Honduran ships trading between the United States and Central America and beneficially owned by United States citizen, *McCulloch v. Sociedad Nacional*, 372 U. S. 10.

In both cases there was similar proof of a bona fide flag with the injured seaman having a remedy at home.

Where the shipowner was managed by a part-time resident Italian national the result was the same, *Inces S. S. v. International Maritime Workers Union*, 372 U. S. 24. These followed the earlier decision of the Court in *Bens v. Compania Nav. Hidalgo, S. A.*, 353, U. S. 138.

As late as March of this year this doctrine was approved in *ILA Local No. 1416 vs. Ariadne Shipping Co.*, 397 U. S. 195, when this Court, in holding Liberian and Panamanian Corporations operating cruise vessels out of Florida, subject to American law insofar as their employment of American longshoremen was concerned, carefully distinguished the law applicable to internal affairs on ships, saying

"We conclude that, since the act primarily concerns strife between American employers and employees, we could reasonably expect Congress to have stated expressly any intention to include within its coverage disputes between foreign ships and their foreign crews . . . to construe the act to embrace disputes involving the internal discipline and order of a foreign ship would be to impute to Congress the highly unlikely intention of departing from a well established rule of International Law that the law of the flag state ordinarily governs the internal affairs of the ship, a principle frequently recognized in treaties with other countries": (pp. 198-199)

This follows a long line of cases construing United States statutes as not applying to foreign vessels unless expressly referring to them. We can do no better than

repeat the following argument that we made in *Lauritsen v. Larsen*, 345 U. S. 571:

The Jones Act (Sec. 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688) which states,

"That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; * * *"

was an amendment of Sec. 20 of the Seamen's Welfare Act of March 4, 1915 (C. 153, 38 Stat. 1164, 1185, Title 46, United States Code, § 688), known as the LaFollette Act. Sec. 20 of this 1915 Act provided as follows prior to amendment:

"That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

In this manner, the fellow-servant rule as applicable to seamen was sought to be abolished. But this Court in *Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, 38 S. Ct. 501, 62 L. Ed. 1171 (1918), held that Sec. 20 of the Seamen's Welfare Act of 1915, in attempting to abolish the fellow-servant rule, had imposed no additional liability upon the shipowner beyond the liabilities already existing under the General Maritime Law. This Court, while recognizing the right of the seaman to bring his action in the State Court under the "saving to suitors' clause" held that the seaman, by the abolishment of the fellow-servant rule,

was given a right, but lacked the remedy to enforce that right.

Later, this Court, in commenting and passing on the constitutionality of the Jones Act, in *Panama Railroad Company v. Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 Law Ed. 748 (1924), in an opinion by Mr. Justice Van Devanter, wrote as follows with respect to the amendment of this Sec. 20 of the Act of 1915, at 264 U. S. 389:

“ * * * As originally enacted, § 20 was part of an act the declared purpose of which was ‘to promote the welfare of American seamen.’ It then provided that in suits to recover damages for personal injuries ‘seamen having command shall not be held to be fellow-servants with those under their authority,’ and in *Chelentis v. Luckenbach S. S. Co.*, *supra*, p. 384, this Court treated it as part of the maritime law, but held it did not disclose a purpose ‘to impose upon shipowners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore.’ After that decision the section was reenacted in the amended form hereinbefore set forth as part of an act the expressed object of which was ‘to provide for the promotion and maintenance of the American merchant marine.’ ”

Sec. 33 of the Merchant Marine Act of 1920, therefore, properly takes its place within the framework of the Act to which it was a partial amendment, i.e., the Seamen's Welfare Act of 1915.

The question to be determined is whether the expression “any seaman” as used in the Jones Act was intended to apply to the case of a foreign seaman injured aboard a foreign vessel in a foreign port by reason of the fact

that the articles which that seaman had signed on the foreign form were signed by him in a United States port.

The answer is to be found by reference to the wording and context of the Seamen's Welfare Act of 1915. A section by section examination of the Act discloses that certain sections thereof were made specifically applicable to foreign vessels under certain stated conditions. With respect to the balance of the sections, the provisions were couched in terms applicable to United States vessels, but with no extension of their application to foreign vessels.

The Seamen's Welfare Act of March 4, 1915, known as the LaFollette Act, is entitled:

"An Act To promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The opening section of the 1915 Act amended Section 4516 of the Revised Statutes of the United States with respect to the requirement that a master of a vessel must sign-on, if obtainable, suitable seamen to replace those whose services have been lost by reason of desertion or casualty, and further provides that the master must report such losses to the "United States consul at the first port at which he shall arrive". This opening section is clearly restricted in its application to United States vessels by reason of the reference to United States consuls. It cannot be supposed that foreign vessels in foreign ports should report crew deficiencies to United States consuls located in those foreign ports.

Sec. 2 makes certain provisions for the division of the crew into watches, as well as for distinction between work

on deck and work in the engineroom. It also provides that no unnecessary work shall be done on Sundays or on certain specified holidays. This section, however, is limited in its application to "all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays or sounds exclusively * * *." Sec. 2 is clearly inapplicable to other than United States vessels.

Sec. 3 of the Act amended Sec. 4529 of the Revised Statutes of the United States with respect to the time for payment of wages to seamen on coasting voyages, as well as in the case of vessels making foreign voyages. In this section the terminology used is that "the master or owner of any vessel making coasting voyages shall pay to every seaman, * * *," and there is no indication that the section was to apply to foreign seamen serving aboard foreign vessels. The significance of this failure to refer to foreign vessels is pointed up when we examine the provisions of Sec. 4 and especially Sec. 11 of the Act.

Sec. 4 of the Act amended Sec. 4530 of the Revised Statutes of the United States with respect to the right of a seaman to receive on demand from the master of the vessel one-half the wages earned to that point at every port where such vessel loads or delivers cargo before the end of the voyage. The opening language of Sec. 4 states that "every seaman on a vessel of the United States shall be entitled to receive on demand * * *" and then outlines his rights. The closing portion of Sec. 4 reads as follows:

"And provided further, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

This Sec. 4, therefore, stands out in relation to the three sections previously considered, in that Congress considered

it necessary to include this specific provision in order to extend its terms to foreign vessels, and even then the extension was itself limited to "foreign vessels *while in harbors of the United States*". No effort was made by Congress to extend its application to foreign vessels while outside the territorial waters of this country.

The terms of this Sec. 4 were fully considered by this Court in the case of *Strathearn S.S. Co. v. Dillon*, 252 U. S. 348, 40 S. Ct. 350; 64 L. Ed. 607 (1919), wherein Mr. Justice Day, in a unanimous opinion, held that the terms of the section were applicable to a British subject serving aboard a British vessel while that vessel was in a port of the United States. The fact that certain contracts which ran counter to the purposes of the statute were voided, did not render Sec. 4 of the statute unconstitutional as destructive of contract rights. Mr. Justice Day held that this Court had fully considered the matter in *Patterson v. Bark Eudora*, 190 U. S. 169, 23 S. Ct. 821, 47 L. Ed. 1002 (1903), and that there was no doubt as to the authority of Congress to pass a statute of this sort specifically applicable to foreign vessels in our ports.

Sec. 5 of the Act of 1915 amended Sec. 4559 of the Revised Statutes of the United States with respect to provisions for the handling of complaints by the officers or crew of a vessel while in a foreign port when the vessel was alleged to be in an unsuitable condition to go to sea. The wording of this section is that "upon a complaint in writing signed by the first and second officers or a majority of the crew of any vessel, while in a foreign port, * * * the consul or a commercial agent who may discharge any of the duties of a consul shall cause to be appointed" certain persons to examine into the cause of the complaint. In this section the expression "any vessel" is used, but there are no additional provisions extending the terms of the section to foreign

vessels. In fact, it would be hard to imagine that Congress could have intended to regulate the actions of foreign consuls or to have foreign seamen serving aboard foreign vessels present their complaints and problems to a United States consul in a foreign port for correction of the alleged deficiencies. Such an exercise of power by a United States consul in a foreign port with respect to a foreign vessel and foreign seamen would be totally out of line with basic theories of international jurisdiction.

Sec. 6 of the Act of 1915 amended Sec. 2 of the Act of March 3, 1897, as to the provisions for crew space and sanitary conditions aboard "all merchant vessels of the United States". This section was clearly not intended to apply to other than merchant vessels of the United States.

Sec. 7 of the Act of 1915 amended Sec. 4596 of the Revised Statutes of the United States and specified punishments for certain offenses as to "any seaman who has been lawfully engaged or any apprentice to the sea service". Here again, as to the terms "any seaman", there is no specific provision making the section applicable to foreign seamen serving aboard foreign vessels such as were found in Sec. 4, or will be found later in Sec. 11.

Sec. 8 of the Act of 1915, amended Sec. 4600 of the Revised Statutes of the United States and provided that "it shall be the duty of all consular officers to discountenance insubordination by every means in their power and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner." The expression "all consular officers" in Sec. 8 is as general as the expression "any seaman" found in Sec. 7 and later in Sec. 11, but here again it is clear that it was the intent of Congress that "all consular officers" meant only consular officers of the United States. As stated by this Court in *Sandberg*

v. *McDonald*, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918), at 248 U. S. 195:

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction."

Sec. 9 of the Act of 1915, amended Sec. 4611 of the Revised Statutes of the United States with respect to flogging and corporal punishment "on board of any vessel". No specific application to foreign seamen aboard foreign vessels is to be found in this section. The significance of the failure to extend its application is pointed up by referring to those sections where such an extension was made.

Sec. 10 of the Act of 1915, amended Sec. 23 of the Act entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce", approved December 21, 1898, 30 Stat. 755, 763, with respect to the daily requirements of water and butter. Here again, no attempt was made by the language of the section to extend its application to other than United States vessels or American seamen.

In Sec. 11 of the Seamen's Act of 1915 we find a repetition of the situation existing in Sec. 4 of that same Act. The provisions are specifically extended to foreign vessels while in waters of the United States. Sec. 11 amended Sec. 24 of the Act entitled "An Act to amend the laws relating to American seamen for the protection of such seamen and to promote commerce", approved December 21, 1898. Sec. 24 of that Act of 1898 was, in turn, an amendment of Sec. 10 of Chapter 121 of the laws of 1884, 23 Stat. 53, as in turn amended by Sec. 3 of Chapter 421 of the laws of 1886, 24 Stat. 79. Sec. 11 of the Act of 1915 amended all these prior statutes as to the prohibition against paying "any seaman" wages in advance of the time

when he had actually earned the same. Sub-section (e) of this Sec. 11 of the Act of 1915 reads as follows:

"That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation."

Sub-section (a) of this section used the words "that it shall be and is hereby made unlawful in any case to pay any seaman wages in advance * * *." Yet, in spite of the use of the words "any seaman" Congress deemed it necessary to add sub-section (e) in order to extend the terms of this section to apply as well to foreign vessels in the waters of the United States. In other words, Congress did not believe that the use of the expression "any seaman" was in and of itself sufficient to require application to foreign vessels, even if those vessels were in the ports of the United States.

This situation finds an immediate parallel in the wording of the Jones Act which was, of course, an amendment of Sec. 20 of this same Seamen's Welfare Act of 1915. The opening language of the Jones Act reads, "That any seaman who shall suffer personal injury in the course of his employment may * * *." But there is no provision contained in Sec. 20, as amended, applying that section to foreign vessels under any circumstances whatsoever.

If Congress had intended that the Jones Act should apply to injuries sustained by foreign seamen aboard a foreign vessel while outside the territorial waters of the United States, the necessary language was at hand for

them specifically so to provide. It is significant that Congress added no such provisions.

In *Patterson v. Bark Eudora*, *supra*, this Court considered the effect of Sec. 24 of the Act of December 21, 1898, 30 Stat. 755, 763, to which Sec. 11 of the Seamen's Act of 1915 was an amendment, as described above. This Sec. 24 of the Act of December 21, 1898, similarly made it unlawful in any case to pay "any seaman" wages in advance of the time when he had actually earned same. It further stated that the provisions of the section were to be applicable as well to foreign vessels as to vessels of the United States.

The case involved primarily a question of the power of Congress to enact such a provision applicable to foreign vessels. In the words of Mr. Justice Brewer, at 190 U. S. 173:

"But the main contention is that the statute is beyond the power of Congress to enact, especially as applicable to foreign vessels. It is urged that it invades the liberty of contract which is guaranteed by the Fourteenth Amendment to the Federal Constitution * * *."

The Court held that the provision making this section of the Act specifically applicable to foreign vessels was constitutional and within the domain of Congress under the commerce clause of the Constitution.

It has been contended on behalf of the plaintiff-respondent that the remedy of the Jones Act is available to foreign seamen serving aboard foreign vessels, and it is further contended that such a conclusion finds support in the decision of this Court in *Patterson v. Bark Eudora*, *supra*. As a matter of fact, the decision of this Court in *Patterson v. Bark Eudora* can have no parallel application to the

provisions of the Jones Act, since, as has been pointed out, *Patterson v. Bark Eudora*, *supra*, involved the constitutionality of a section specifically applicable to foreign vessels, whereas the Jones Act contains no such provision. The most that can be said for this case in connection with the applicability of the Jones Act to foreign vessels and foreign seamen is that Congress would have been within Constitutional limits if it had held that the Jones Act was to apply to foreign vessels and foreign seamen serving on those vessels *while in waters of the United States*. The value of the holding in *Patterson v. Bark Eudora*, *supra*, to the facts herein is totally vitiated by the fact that Congress made no such provision in the Jones Act, let alone as to injuries to an alien on a foreign vessel in a foreign port or on the high seas.

Later, this Court considered the interpretation of this Sec. 11 of the Act of 1915 in *Sandberg v. McDonald*, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 300 (1918). This Court held that the provisions of Sec. 11 did not apply to advancements made in foreign ports to alien seamen shipping abroad on foreign vessels, pursuant to contracts valid under the foreign law, in the following language at 248 U. S. 195:

"Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

And later at page 196:

"In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates

the provisions of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congress."

For the reasons discussed above with respect to *Patterson v. Bark Eudora, supra*, the *Sandberg* case is equally undeterminative of the extent of the application of the Jones Act, since the *Sandberg* case also involved the interpretation of a section of the statute specifically extended to foreign vessels. It must be noted, however, that in spite of Congress' intent to make Sec. 11 applicable to foreign vessels while in waters of the United States, this Court held that the doctrine was not to be extended beyond the territorial limits of the United States both by reason of the statute and for reasons of common sense.

How then can we justify the application of the Jones Act to an injury to an alien seaman aboard a foreign vessel while in a foreign port, when the wording of the Jones Act contains no provision making it applicable to foreign seamen serving aboard foreign vessels under any geographical conditions whatsoever?

Sec. 12 of the Act of 1915 repealed Sec. 4536 of the Revised Statutes of the United States and provided that no wages due, or accruing to "any seaman" or apprentice should be subject to attachment or arrestment. Note that Sec. 12, as does Sec. 11, uses the expression "any seaman" and yet Sec. 12 contains no specific extension to foreign vessels. If a specific extension was required in Sec. 11

after the use of the expression "any seaman", then such a specific extension would equally be necessary as applied to the same expression when used in Sec. 12.

Sec. 13 of the Act of 1915 establishes certain requirements as to the number of the deck crew who are required to have a rating of not less than A.B. and requires 75% of the crew of each department to understand any order given by the officer of such vessel. The language of this section is in the form of a prohibition, reading "that no vessel of 100 tons gross and upward, except those navigating rivers exclusively and the smaller inland lakes and except as provided in Sec. 1 of this Act, shall be permitted to depart from any port of the United States unless she has on board * * *." Here again, no specific extension is made as to foreign seamen or foreign vessels, and, in fact, the subsequent language in Section 13 which provides that,

"Graduates of school ships approved by and conducted under rules prescribed by the Secretary of Commerce may be rated able seamen after twelve months service at sea * * *",

indicate that this section of the Act was not intended to apply to other than American vessels, since Congress certainly did not intend that all foreign seamen were to apply for licenses and certificates from the United States Department of Commerce before being qualified to ship aboard foreign vessels. This failure to provide for foreign vessels is pointed up by reference to the following section of the Act, i.e., Sec. 14, where we find a specific application to foreign vessels leaving ports of the United States.

Sec. 14 of the Act of 1915 amended Sec. 448 of the Revised Statutes by adding thereto specific regulations as to life saving appliances, the minimum number of davits and open boats, and, among other things, for a minimum

number of certified lifeboat men. This section contains the following language:

“Provided, that foreign vessels leaving ports of the United States shall comply with the rules herein prescribed as to life saving appliances, their equipment, and the manning of same.”

Here again, as was found in Sec. 4 and Sec. 11 of the Act of 1915, there is a specific provision as to the extension of the section to foreign vessels under certain stated conditions. It becomes increasingly obvious, therefore, that Congress was well aware of the fact that certain of these sections were to be applied to foreign vessels, whereas certain of them were not. Where language is found making specific reference to the application of a section to foreign vessels, then it must be concluded that such was the intent of Congress, and conversely, it must be concluded that, as to those sections where such a specific extension is omitted, it was the intent of Congress that no such extension be made. If that were not the case, then such wording would be mere surplusage and of no effect whatsoever.

Section 15 of the Act of 1915 provides that: “the owner, agent, or master of every barge which, while in tow through the open sea has sustained or caused any accident, shall be subject, in all respects to the provisions of Sections ten, eleven, twelve and thirteen of chapter three hundred and forty-four of the Statutes at Large, approved June twentieth, eighteen hundred and seventy-four,” and further provides that the reports prescribed in those sections shall be transmitted by collectors of customs to the Secretary of Commerce, who shall, in turn, transmit them in summary form to Congress annually. Here again, no specific provision is made applying the terms of this section to foreign vessels, and we should bear in mind that if such had been the inten-

tion of Congress, then the language was readily available, for, as has been noted above, such language had already been used three times in the same Act.

Sec. 16 of the Act of 1915 "requested and directed" the President to give notice to the several governments that all treaties and conventions between the United States and such governments with respect to the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign ports and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States be terminated upon the expiration of certain specified periods. This request was also directed to "any other treaty provision in conflict with the provisions of this Act."

The Congressional Record bears witness to the prolonged discussion and debate which the provisions of this particular section evoked. On the one hand, Senator LaFollette of Wisconsin was urging upon Congress the desirability of the termination of such treaties, whereas Senator Burton of Ohio was the leader of the faction which urged a more moderate course. In the end, Senator LaFollette had his way, for Sec. 16 as finally enacted did call for the termination of such treaties. (Congressional Record, 63rd Congress, 1st Session, Vol. 50, Part 6, pages 5761-5792.)

It is interesting to note that in spite of the urging of Senator LaFollette, from whom the Act of 1915 derives its name, the provisions of that Act were not made uniformly applicable to foreign vessels, but only certain sections thereof, and then only under certain specified conditions and situations.

Evidence of the reluctance in certain quarters of Congress to make even these specified sections applicable to foreign vessels is to be found in the Report of the House

Committee on Merchant Marine and Fisheries. In commenting and passing on the proposed Sec. 4 of the Act dealing with half wages the Report states (House Report No. 851, 63rd Congress, 2nd Session, page 18):

"The application of this section, however, to foreign vessels raises a serious question."

And later at page 20 of the same Report:

"It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.

Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships and question its value to our merchant marine."

Sec. 17 of the Act of 1915 provided for the repeal of the various treaties designated in Sec. 16 upon the termination of the periods of notice required.

Sec. 18 of the Act of 1915 provided as to the time the Act was to take effect.

Sec. 19 of the Act of 1915 amended Sec. 16 of the Act of December 21, 1898, entitled "An Act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce," by adding thereto a provision that if "any seaman" incapacitated from service by injury or illness was on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel "before an American consul or consular agent was impracticable," then such seaman himself was to be sent to a consul or consular agent who was in turn directed to care for him and defray the cost of his maintenance and transportation. Here again, although the section of the Act uses the expression "any seaman", it is obvious that it refers to seamen aboard American vessels,

for it refers specifically to the requirement of a personal appearance of the master of the vessel before an "American consul or consular agent".

The next and last section, Sec. 20 of the Act of 1915, was the section which sought to abolish the fellow-servant doctrine as applied to seamen, and which was superseded and amended by the passage of the Jones Act in 1920.

If we consider the Jones Act within the framework of the Merchant Marine Act of June 5, 1920, of which it was Sec. 33, we are forced to the same conclusion that the expression "any seaman" was not intended to cover foreign seamen serving on foreign vessels who were injured in foreign ports.

The Merchant Marine Act of June 5, 1920, as has been pointed out above, was "An Act To provide for the promotion and maintenance of the American Merchant Marine * * *" and as such its provisions and sections covered the following subjects: the repeal of prior legislation with respect to appropriation for the Military and Naval establishments; the repeal of prior legislation with respect to charter and freight rates and to the requisitioning of vessels by the Government; the establishment of the United States Shipping Board; authorization for the sale or charter of Government-owned vessels to citizens of the United States; further authorization with respect to the sale of other property by the United States Shipping Board; provisions for the investigatory powers of the United States Shipping Board with respect to the operation of vessels by citizens of the United States; provisions for the carrying of all mails of the United States on American-built vessels documented under the laws of the United States if practicable; provisions for a limitation of the number of passengers to be carried aboard cargo vessels documented under the laws and flag of the United States; provisions stating that no

merchandise shall be transported between points in the United States on other than vessels built in and documented under the laws of the United States and owned by persons who are citizens of the United States; all the provisions of the Ship Mortgage Act of 1920; a further amendment of the prohibition against the payment of advance wages, earlier mentioned, not amending, however, the specific provisions as to the applicability to foreign vessels within the harbors of the United States; and finally, the establishment of certain definitions as to the ownership of vessels by citizens of the United States.

In short, there is nothing in the Merchant Marine Act of June 5, 1920, calling for any application whatsoever to foreign seamen serving aboard foreign vessels in foreign ports, since the whole Act is concerned with the machinery necessary for the establishment and operation of the United States Shipping Board and the operation, supervision, sale and purchase of vessels of the United States.

The report of the Senate Committee on Commerce made the following statement with respect to the aims of the Merchant Marine Act of 1920 (Senate Report No. 573, 66th Congress, 2nd Session, p. 2):

"No interests but American interests have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it."

If we look to the wording of the Jones Act, totally aside from its context within the framework of the Acts of 1915 or 1920, further evidence is found that Congress did not intend to include within its provisions foreign seamen serving aboard foreign vessels injured in foreign ports. The closing sentence of Sec. 33 of the Merchant Marine Act of 1920 reads as follows:

“ * * * Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”

The use of the word “jurisdiction” has been interpreted by this Court not to relate to the general jurisdiction of the court, but to venue only. *Panama Railroad Company v. Johnson*, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748 (1924). Even granting such an interpretation of the word “jurisdiction”, however, this closing sentence of Sec. 33 makes it abundantly clear that Congress had in mind domestic employers and shipowners rather than foreign shipowners, when it adopted this particular phraseology.

What foreign shipowner would be likely to reside in or have his principal office in the United States? How would a foreign seaman proceed under the language of the Jones Act if his employer, the foreign shipowner, did not live in the United States and did not have any office located in the United States?

If Congress had intended to give a remedy to the foreign seaman serving aboard a foreign vessel under the Jones Act, it could very easily have so provided by giving him an *in rem* remedy. With such a remedy available, the foreign seaman could have proceeded against the vessel upon her arrival in any United States port. It is significant that Congress did not make any such provision. A lien against the vessel is essential to every proceeding *in rem*, and no such lien arises by reason of the Jones Act in favor of an injured seaman. This Court specifically so held in *Plamals v. s/s Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827 (1928).

There may be isolated instances in which the defendant employer of the foreign seaman, while having his principal office located in the foreign country, may at the same time

have an office in this country so as to allow the injured foreign seaman to start an action under the Jones Act in the court of the district in which such local office is located. But if we are to impute to Congress the intent to provide for foreign seamen serving aboard foreign ships under the terms of the Jones Act in spite of its language, then we must equally be prepared to admit that by the section as presently written, Congress has given only a partial remedy, since the majority of foreign seamen would find it impossible to comply with the jurisdiction and venue requirements as presently constituted.

It has been argued by plaintiff-respondent, both in the Court of Appeals and in the brief submitted in opposition to the petition for a writ of certiorari in this Court, that the Jones Act should be applied to foreign seamen serving on foreign ships who sign on in the United States and are subsequently injured outside the territorial waters of the United States in order to close the gap alleged to exist between the operating costs of foreign and American ship-owners. This argument is apparently based on a belief that such a construction would indirectly subsidize the American Merchant Marine, and that as a result the burden falling upon the United States taxpayer would be lightened.

Plaintiff-respondent ignores our national policy against indirect subsidies to shipping as shown by the Merchant Marine Act of June 29, 1936 (C. 858, 49 Stat. 1985, 46 U. S. C. § 1101), and the Congressional Reports.

Prior to the passage of the Merchant Marine Act of 1936, Congress had provided aid to American shipping in the form of lending money at low rates of interest to the American shipping companies for the purpose of building new ships for foreign trade. Congress had, in addition, appropriated large annual sums under the guise of payments for ocean-mail contracts. Plaintiff-respondent now

seeks to have the court construe the Jones Act as applying to foreign seamen in order to give American shipowners an additional subsidy. However, President Roosevelt, in his Message to Congress on the Merchant Marine Act of 1936, dated March 4, 1935, in speaking of the difference between the ocean-mail payments actually made and the reasonable cost of such service, stated (74th Congress, House Document No. 118, p. 2):

"The difference, \$27,000,000, is a subsidy, and nothing but a subsidy. But given under this disguised form it is an unsatisfactory and not an honest way of providing the aid that Government ought to give to shipping.

I propose that we end this subterfuge. If the Congress decides that it will maintain a reasonably adequate American Merchant Marine I believe that it can well afford honestly to call a subsidy by its right name." (Emphasis supplied.)

More recent evidence of the policy of our government to avoid the indirect subsidy is found in President Truman's request made in August, 1952, to the Secretaries of Commerce and the Treasury to prepare reports on the existing law offering tax deferments on shipping earnings as an added inducement to the setting aside of funds for new construction. President Truman asked for a plan to abrogate these tax benefits and establish some other financial assistance in the form of a direct subsidy.

It is submitted, that for the courts of the United States to attempt to reduce the burden of the United States taxpayer by subjecting foreign shipowners to higher insurance rates for personal injury coverage would be to resort to that very form of "subterfuge" which the Merchant Marine Act of 1936 was explicitly designed to avoid. The decisions of our courts have no place within this province.

According to present policy, foreign as well as United States vessels are subject to regulation by multilateral Conventions or treaties, rather than by unilateral legislation. The most recent example was the International Convention for Safety of Life at Sea, 1948, held in London. This Convention was signed in London on June 10, 1948, by the respective plenipotentiaries of the government of the United States and the governments of 27 other countries. The provisions of the Convention were submitted to the Senate on January 13, 1949, and were ratified without amendment or exception on April 20, 1949 (Congressional Record, 81st Congress, 1st Session, Vol. 95, Part 4, pages 4822-4825). Subsequently, on November 19, 1951, the fifteenth country deposited its ratification (Denmark was one of the fifteen) and the Convention thereby came into force on November 19, 1952. President Truman, by proclamation dated September 10, 1952, proclaimed that the Convention was to be observed and fulfilled with good faith by the United States on and after November 19, 1952.

This Convention provides, in brief, for all vessels to obtain from their own countries certificates of compliance with the requirements of the Convention with respect to: life saving equipment, watertight bulkheads, double bottoms, load lines, stability tests, log entries, safety of electrical installations, fire protection and patrols, radio installations and the carriage of dangerous cargoes. Also promulgated were uniform regulations for preventing collisions at sea. The full text of the Convention is now officially reported in 65 United States Statutes at Large, 406. This has been followed by the 1960 Safety of Life at Sea Convention, 16 UST 185.

According to plaintiff-respondent's principles of statutory construction, the same result should have been reached by extending American inspection statutes to cover all

ships trading to the United States. That Congress and the President acted through the Convention is proof positive of our present policy to steer clear of applying United States statute law to foreign vessels, but to accomplish the same aims through multilateral action calling for consent by all concerned.

Counsel for plaintiff-respondent has stressed the alleged inequality existing between American and foreign seamen, and urges that the Jones Act should be applied since it is more liberal to the seamen.

Those are not valid arguments for applying the Jones Act to the factual situation herein. The real question is whether the Jones Act was by its terms intended to be applicable to a foreign seaman, who is injured in a foreign port after signing-on a foreign vessel in a United States port, when that seaman recovered the benefits to which he was entitled under the law of the flag.

Having examined the wording of the Jones Act, both within the framework of the Act of 1915, to which it was an amendment and within the framework of the Merchant Marine Act of 1920, in which it was enacted, we return to the question: Does "any seaman" as used in the Jones Act, mean foreign seamen serving aboard foreign vessels, who are injured in foreign ports aboard those vessels?

Certainly the provisions of the Acts would not so indicate, for when Congress intended any particular section to apply to other than United States vessels, a specific provision was invariably included, and as a result, no guesswork is required to determine what sections of the Acts are limited to United States vessels and what sections of the Acts are to be further extended so as to apply as well to foreign vessels under specified conditions.

Sec. 11 of the Act of 1915 which prohibited the payment of advance wages also used the expression "any seaman"

in defining its applicability, but Congress did not feel that that alone was sufficient to extend to other than United States vessels, because sub-section (e) of that Sec. 11 called for specific application "to foreign vessels while in waters of the United States." If Congress had intended the Jones Act to apply as well to foreign vessels, then why was such a specific extension not included within its terms?

As stated by this Court in *Sandberg v. MacDonald*, at 248 U. S. 195, with respect to application of Sec. 11 to foreign vessels while in other than United States ports:

"Had congress intended to make void such contracts and payments, a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

To ignore the above, and to construe the Jones Act as a penal statute in favor of American shipowners so as to penalize a country such as Greece which is making a bona fide effort to establish a strong merchant marine is entirely contrary to this Court's decisions and traditions.

CONCLUSION

**REARGUMENT SHOULD BE GRANTED AND THE
DECISION BELOW REVERSED.**

Respectfully Submitted,

JAMES M. ESTABROOK,
*Counsel for the Royal Greek Govern-
ment as Amicus Curiae*

DAVID P. H. WATSON,
Of Counsel

CERTIFICATE OF COUNSEL

Pursuant to Rule 58 I certify that the petition herein is presented in good faith and not for delay.

.....
James M. Estabrook

Dated: New York, N. Y., July , 1970

APPENDIX C

IN THE
Supreme Court of the United States
OCTOBER TERM, 1969

No. 661

HELLENIC LINES LIMITED
and
UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,
v.
ZACHARIAS RHODITIS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

**AMICI CURIAE BRIEF IN SUPPORT OF THE
PETITION FOR REHEARING**

JOHN R. SHENEMAN
*Attorney for Amici Curiae
Greek Chamber of Shipping*

and

THE UNION OF GREEK SHIPOWNERS
19 Rector Street
New York, New York 10006

EDWIN K. REID
GEORGE D. BYRNES

Of Counsel

IN THE
Supreme Court of the United States

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HELLENIC LINES LIMITED
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**AMICI CURIAE BRIEF IN SUPPORT OF THE
PETITION FOR REHEARING**

STATEMENT OF INTEREST OF AMICI CURIAE

This brief as *amici curiae* is respectfully submitted in support of Petitioners' petition for a rehearing of the decision of this Court No. 661 dated June 8, 1970 by The Union of Greek Shipowners and the Chamber of Shipping of Greece.

The Petitioners' and Respondent consented to the filing of a brief in support of Petitioners' brief for a writ of certiorari and Petitioners' brief on the merits.

The statement of interest of *amici curiae* is fully set forth in amici curiae's brief filed in support of Petitioners'

brief on the merits. Briefly amici curiae have a vital interest that Greek law and the jurisdiction of the Greek Courts, preserved in the Collective Agreement and in accordance with the Greek social welfare programs, should exclusively govern personal injury disputes and all other disputes affecting the internal economy and discipline of Greek owned Greek flag vessels.

ARGUMENT

The majority decision of this court holding that the Jones Act, 46 USC. 688 applied to Hellenic Lines, Ltd., turned on the facts that Pericles, the owner of more than 95% of the stock of Hellenic Lines, Ltd., a Greek corporation, was a lawful permanent resident alien whose base of operation was New York and that the Greek flag, Hellenic Hero, in a regular scheduled run between the U. S. and foreign ports, and many of the sister ships earned income from cargo originating or terminating here. The majority virtually ignored the flag, the contract of employment, the nationality of the seamen, all of which were Greek, and that the seaman might be compensated in Greece.

The test adopted by the majority was:

"If, as stated in *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437, the liberal purposes of the Jones Act are to be effectuated, the facade of the operation must be considered as minor, compared with the real nature of the operation and a cold objective look at the actual operational contacts that this ship and this owner have with the United States."

In applying the test to the facts this Court stated:

"We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner,

engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibility of a Jones Act "employer". The flag, the nationality of the seaman, the fact that his employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contracts which this alien owner has with this country."

The dissenting decision, disagreeing with the majority, stated:

"This result is supported neither by precedent, not realistic policy, and in my opinion is far removed from any intention that can reasonably be ascribed to Congress."

The majority decision test of substantial contacts with the United States is contrary to the test set forth in *Lauritzen v. Larsen*, (1953) 345 U. S. 571, 582:

"Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved".

No where did the majority seriously attempt to resolve the conflicts between the Jones Act and Greek law. Nor did the majority adequately value the points of contact between the Respondents business, the transaction and the Greek government.

The cornerstone of *Lauritzen* that the Jones Act was to be construed under prevalent doctrines of international law, absent some "clear expression" from Congress to the contrary, was overturned. 345 U. S. at 577. *Romero v.*

International Terminal Co., 358 U. S. 354 (1959) at 383. *McCulloch v. Sociedad Nacional*, 372 U. S. 10 (1963) ILA 1416 v. *Ariadne Shipping Co.*, 1970 AMC 259. The majority reduced the most venerable and universal rule of maritime law, which gives cardinal importance to the law of the flag, to a minor weight.

The dissent correctly points out that the Jones Act is concerned with prescribing particular remedies, rather than regulating commerce or creating a standard for conduct. It is of a remedial type pertaining to an injured seaman, American or resident alien, whose well being is the concern of the United States. The employer, Petitioner, does not fall to be dealt with under legislative jurisdiction. The dissent stated that no matter how qualitatively substantial or numerous "contacts" may be they have no bearing on Jones Act recovery. Questions involving transactions occurring aboard foreign flag vessels should be answered by Respondent's relationship to this country.

The majority decision premised that an American based foreign shipowning employer, not subject to the Jones Act, has a competitive economic advantage over United States citizens engaged in the same business. The premise is based upon an assumption. There is no proof before the court to support the premise. The dissent points that out and assumes that even if Jones Act liability is a significant uncompensated cost in the operation of an American ship, that is not a sufficient reason to afford a recovery to a foreign seaman when the underlying concern of the legislation is the adjustment of the risk of loss between individuals and not the regulation of commerce or competition.

Congress has given economic protection benefits to American shipowners to offset higher operational costs in which alien shipowners, indeed, Hellenic Lines, cannot participate. See, e.g. 46 USC 883 (coastwise trade); 46 U.S.C. 1180 (subsidy). See generally S. Lawrence United States Merchant Shipping Policies & Politics 61-67 (1966).

While Pericles has the same constitutional protection of due process that we accord citizens, he is not entitled to the benefits of all laws of the United States. He cannot qualify for a subsidy, operate vessels in coastwise trade and participate in the carriage of certain cargoes. Nor can he hold public office or vote. He may be sued in any United States judicial district. All of these factors show his ties with foreign sovereign and his second class constitutional status. On the other hand the laws of Greece prohibit him from crewing Greek flag vessels with Americans so as to afford employment to American seamen and higher wages.

The majority, as emphasized by the minority, has taken the phenomenon of "convenient" foreign registry as a wedge for displacing the law of the flag and with a broad stroke brushed aside principles of comity designed to "foster amicable and workable relations". 345 U. S. at 582.

Respondent, a Greek national who resides in Greece, has no American ties. His well-being is of no concern to this country. The Greek law provides the appropriate rule in the Greek social welfare programs. The application of the law of the flag to this case would be in accordance with the principles of international law and comity.

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,

JOHN R. SHENEMAN
Attorney for Respondents
 19 Rector Street
 New York, New York 10006

EDWIN K. REID
 GEORGE D. BYRNES
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that the above brief in support of the petition for rehearing is presented in good faith and not for delay.

It is also certified that on the day of June, 1970 copies of the said brief have been forwarded to:

George F. Wood of Pillans, Reams, Tappan, Wood & Roberts, Attorney for Petitioners, Hellenic Lines, Limited and Universal Cargo Carriers, Inc. at his office and post office address, 510 Van Antwerp Building, P. O. Box 2245, Mobile, Alabama 36601.

Joseph B. Stahl, Attorney for Respondent, Zacharias Rhoditis at his office and post office address, Baronnee Building, New Orleans, Louisiana 70112.

Mr. Wood's and Mr. Stahl's consent was obtained to file the brief Amici Curiae in support of the Petition.

JOHN B. SHENEMAN